79-175

FILED

AUG 2 1979

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. .....

CITY OF ST. LOUIS, a Municipal Corporation,
Petitioner,

v.

THOMAS W. GARLAND, INC. and MANLEY INVESTMENT COMPANY,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for the Eighth Circuit

JACK L. KOEHR
City Counselor
JOSEPH R. NIEMANN
Assistant City Counselor
ROBERT H. DIERKER, JR.
Assistant City Counselor
Room 314 City Hall
St. Louis, Missouri 63103
622-3361
Attorneys for Petitioner,
City of St. Louis

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

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The City of St. Louis, a municipal corporation (City), petitioner herein, respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on May 15, 1979.

OPINIONS BELOW

The opinion of the United States District Court, Eastern District of Missouri, filed on May 23, 1978 is reported at 450

F.Supp. 239 and is reproduced in Appendix A, *infra*. The opinion of the Eighth Circuit Court of Appeals reversed the judgment of the District Court. The opinion, as amended on denial of rehearing and rehearing en banc, was entered on May 15, 1979 and is reported at 596 Fed.2d 784. The opinion is reproduced in Appendix B, *infra*.

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was filed on May 15, 1979 and this petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 USC §1254(1).

QUESTIONS PRESENTED FOR REVIEW

Whether a complaint that fails to allege actual physical invasion or appropriation of property by the City is sufficient to establish a claim of de facto condemnation against the City.

Whether a cause of action lies on a theory of an unconstitutional taking of property by a municipality which merely authorized by two ordinances redevelopment of a downtown area by a private redevelopment corporation.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The relevant part of the Fifth Amendment of the Constitution of the United States provides:

> "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall

> private property be taken for public use, without just compensation."

Chapter 353 of the Revised Missouri Statutes is set out in Appendix C, *infra*.

STATEMENT OF THE CASE

Thomas W. Garland, Inc. (Garland), which operates a women's ready to wear business in leased premises in downtown St. Louis, filed a complaint in District Court on January 30, 1978 against the City of St. Louis (City) and Manley Investment Company (Manley). Appendix D, *infra*. Pursuant to 28 USC §1331 Garland sought monetary relief for an alleged taking of its property by the City in violation of the Fifth and Fourteenth Amendments to the United States Constitution and declaratory relief from Manley as lessor seeking a termination of Garland's lease which is due to expire December 4, 1982. Manley is the fee owner of the property on which Garland conducts its business.

The complaint recites that by enactment of Ordinance 55952, approved June 29, 1971, a copy of which is set out as Exhibit A to Garland's complaint, the Board of Aldermen of the City of St. Louis found conditions of blight to exist in an area of downtown St. Louis which includes Garland's premises. As authorized by Sections 353.060 and 353.130 of the Missouri Revised Statutes (Appendix C, *infra*) the Board of Aldermen approved a development plan for the area, including Garland's premises, submitted by Mercantile Center Redevelopment Corporation (Mercantile) and designated Mercantile the developer under Section One of Ordinance 56476, approved April 5, 1973. A copy of Ordinance 56476 is set out as Exhibit B to Garland's complaint. Appendix D *infra*. Mercantile is a private urban redevelopment corporation organized under Chapter 353 of the Missouri Revised Statutes. Mercantile is not a party in Garland's complaint.

Section Three of Ordinance 56476 grants Mercantile the power of eminent domain as authorized by Section 353.130(3) R.S.Mo. Under Section 9 of the Development Agreement set out in Ordinance 56476 the City agrees to vacate certain streets and alleys including St. Charles Street near Garland's property. Garland's complaint does not state that a vacation affecting its access has actually occurred and the agreement entered into by the City and Mercantile does not contemplate the vacation until after acquisition and demolition of the property. Garland's complaint and the ordinances set out therein do not allege that any property acquisition by the City is contemplated. All property acquisition is by Mercantile.

Garland's states that anticipating the development of the area as authorized by Ordinance 56476 and relying on statements to vacate the property by September 1974 made by Mercantile's agents, it took actions to relocate portions of its headquarters office, administrative offices, shipping and receiving functions and fur storage vault at considerable expense but continues to do retail business at the premises. During this time, Manley, acting as Mercantile's agent, acquired ownership of the property Garland leased as well as the surrounding property and caused some surrounding buildings to be vacated and demolished which Garland claims destroyed the business character of the area and diminished the lease's economic value.

Garland states that the schedule for the redevelopment of the area by Mercantile has fallen behind, that formal condemnation proceedings have not been filed and it has suffered financial loss. Garland claims that the City in enacting a blighting declaration under Ordinance 55952 and approving a development plan designating a developer under Ordinance 56476, which granted Mercantile the power of eminent domain and called for the acquisition and removal of Garland's leased premises and the surrounding area by Mercantile, has deprived Garland's of the full use and benefit of its leasehold interest

without compensation in violation of the Constitution and caused Garland consequential damages.

On the basis of the de facto condemnation, Garland's seeks the Court to declare its lease with Manley to be ended.

Upon the filing of separate motions to dismiss by the City and Manley, the District Court dismissed the complaint for failure to state a claim upon which relief could be granted in that no physical invasion or appropriation of Garland's property by the City was alleged. Appendix A, *infra*. Garland was denied leave to file its amended complaint. The complaint, set out in Appendix E, *infra*, merely expanded upon the impact on Garland from surrounding demolition. Garland appealed the District Court's decision to the Eighth Circuit.

The Circuit Court of Appeals reversed the District Court and held that physical invasion or appropriation of property was not essential to a claim of de facto condemnation against the City. Appendix B, *infra*. The cause was remanded to the District Court for reinstatement of the claim against the City for resolution on its merits. The District Court was further to determine whether the power of pendent jurisdiction exists in the case and, if so, whether to exercise that power against Manley.

REASONS FOR GRANTING THE WRIT

1. The Issues Presented Are Important and Recurring Ones Nationally.

It is submitted that the extension by the Eighth Circuit Court of Appeals of the de facto condemnation theory of recovery to the milieu of urban renewal ought to be closely examined by the Supreme Court since the issue is an important one to the continued viability of urban renewal programs. Since the decision of the Supreme Court in *Berman v. Parker*, 348 U.S. 26 (1954), validated massive programs of renewal in urban areas through the cooperative efforts of government and the private sector, various publicly authorized ventures by private entities in carrying out urban renewal have developed in almost every state containing aging urban centers.

The response to the problem of urban renewal has been the formation by State and local governments of procedures to facilitate the involvement of the private sector through urban renewal corporations. The Missouri Constitution provides directly for urban redevelopment. Missouri Constitution, Article VI, Section 21. The Missouri legislature has enacted laws providing for the establishment of urban redevelopment corporations to acquire, construct, maintain and operate redevelopment projects. Chapter 353 Missouri Revised Statutes, Appendix C, *infra*. These limited earnings corporations, when authorized by the legislative authorities of the City affected, may acquire real property by the exercise of eminent domain pursuant to a development plan in areas that are found to be blighted by the city legislature. Sections 353.020, 353.060, 353.130 R.S.Mo. In addition, certain real property tax exemptions are authorized as an incentive to private redevelopment, Section 353.110, R.S. Mo. The objective of the Chapter 353 Urban Redevelopment Corporation Law is to involve private enterprise in the monumental task of redeveloping urban blighted areas and eliminating the social ills resulting from urban blight. *Council Plaza Redevelopment Corporation v. Duffey*, 439 S.W.2d 526 (Mo. 1969). The validity of the process authorized by Chapter 353 is clearly affirmed in *Annbar Associates v. West Side Redevelopment Corp.*, 397 S.W.2d 635 (Mo. 1966), appeal dismissed 385 U.S. 5 (1966).

It was pursuant to the authority of Article VI, Section 21 of the Missouri Constitution and Chapter 353 R.S.Mo. 1969 that the City enacted the ordinances facilitating development of the downtown area by Mercantile Center Redevelopment Corporation, the subject of this litigation.

The Circuit Court of Appeals decision, by fastening de facto condemnation liability on the City for taking the preliminary legislative steps needed to permit an urban redevelopment corporation to implement its plan, effectively annihilates the value of the redevelopment procedure previously sanctioned.

Because prevailing considerations of public policy would seem to militate against a determination that Garland's complaint sets out a cause of action sufficient to establish that a constitutional taking has occurred, the Supreme Court ought to review the decision. If the Eighth Circuit's decision stands without modification, public procedures in redevelopment projects must be significantly altered to the prejudice of the general welfare. The decision holds that the legislative actions of the City set out in the complaint, to-wit: the finding that a condition of blight exists, the approval of a plan for redevelopment designating a developer and granting it tax incentives and the power of eminent domain, constitute a constitutional taking. This imposes an oppressive burden of liability on any city undertaking renewal. In that announcement of the plan of development gives a property owner advance notice of future action to be taken with regard to the property, the property

owner is actually benfited by these legislative actions. To hold a City liable for such actions would present an insurmountable impediment to any city in effecting redevelopment in blighted areas for the good of the community. The potential for liability would encourage the City and developers to adopt a policy of non-public or secret planning that would clearly be of even greater detriment to any property owner's rights and would restrict planning on the owner's part to minimize the impact of urban renewal of his business. The rationale was recognized in *City of Buffalo v. J.W. Clement Company, Inc.*, 28 N.Y.2d 241, 269 N.E.2d 895, 321 N.Y.S.2d 345 (N.Y. Ct. of App. 1971), which extensively discusses the issue of a de facto taking and concludes that a taking has not occurred on facts substantially stronger than those contained in Garland's complaint. See also *Nichols On Eminent Domain*, Vol. 4, Section 12.-3151(5).

From the foregoing it is evident that the issues to be reviewed upon the granting of this petition are exceptionally important. The decision of the Eighth Circuit revolutionizes the law of condemnation in urban renewal by fastening de facto condemnation liability on a City for taking the preliminary legislative steps needed to permit an urban redevelopment corporation to implement its plan. As such, it is a radical departure from the usual application of constitutional principles in this field of law.

2. **The Decision Is in Conflict With Decisions of the Supreme Court.**

In response to claims for compensation on the theory that the threat of condemnation constitutes an actual taking, the Supreme Court of the United States has consistently held that the "mere enactment of legislation which authorizes condemnation of property cannot be a taking." *Danforth v. United States*, 308 U.S. 271, 286 (1939); see also *Joslin Mfg. Co. v.*

City of Providence, 262 U.S. 668 (1923); *Willink v. United States*, 240 U.S. 572 (1916). A taking occurs not by the passage of legislation, but by affirmative actions of government employees. *D.R. Smalley & Sons, Inc. v. United States*, 372 F.2d 505 (Ct.Cl.), cert. denied, 389 U.S. 835 (1967). Similarly, *Danforth, supra*, 308 U.S. at 285, holds that the reduction or increase in the value of property in a project area from the time of the announcement of the project are incidents of ownership and cannot be considered as a taking in the constitutional sense.

The rationale in the *Danforth* case has been applied over the years by a number of jurisdictions to deny claims for compensation based on theories that the threat of condemnation constitutes a de facto taking. See *Nichols On Eminent Domain*, Vol. 4, Section 12.3151(5).

Generally, then, a constitutional taking occurs only at the time a verdict in a condemnation action is confirmed, the deed executed, and the award paid. The Supreme Court has, however, recognized some very limited exceptions to the above rule where the actions of government have been determined to be such that a taking has occurred even though eminent domain proceedings have not been initiated or concluded. But these cases have been limited situations in which the governmental action has been so complete "as to deprive the owner of all or most of his interest in the subject matter, to amount to a taking." *United States v. General Motors Corporation*, 323 U.S. 373 (1945).

A close examination of these instances reveals that these cases always arose in the context of either a physical invasion or physical restraint on the land such as repeated flooding, *Pumpelly v. Green Bay Co.*, 80 U.S. (13 Wall.) 166, (1871), and *United States v. Cress*, 243 U.S. 316, (1917); invasion of air space, *United States v. Causby*, 328 U.S. 256, (1946), and

Griggs v. Allegheny County, 369 U.S. 84, (1962); or actual entry for a time, *United States v. General Motors*, 323 U.S. 373 (1945). The Supreme Court has never held that in the absence of physical invasion or substantial restraint that a compensable taking has occurred.

In directing the District Court to reinstate Garland's complaint, this Court has in effect held that a city which enacts the legislation necessary to permit condemnation by an urban redevelopment corporation may be held liable for condemnation, even though the City takes no further affirmative action with regard to the project developed by the redevelopment corporation. The Appellate Court's opinion is, therefore, in direct conflict with the principles of *Danforth v. United States*, supra, and the line of cases, state and federal, which hold that no claim for just compensation may be predicated on legislative acts or merely ministerial or passive actions by a governmental agency.

3. **The Decision of the Eighth Circuit Extending the Right to Recovery on the Basis of an Expanded Theory of De Facto Condemnation Reflects the Out-Growth of Decisions by Two Other Circuits That Have Allowed Recovery on a Theory of Law Unauthorized by the Supreme Court.**

As is pointed out above, the Supreme Court has recognized some exceptions to the general rule that a taking occurs only at the conclusion of eminent domain procedures but only where there is a physical invasion of the property or action to appropriate the property. Legislative actions are insufficient to establish a de facto taking.

The question of whether or at what point actions by government in undertaking urban renewal amount to a taking of property in a constitutional sense has not been addressed by the Supreme Court. While *Danforth*, supra, represents current applicable standards, these standards have been significantly expanded in recent years by decisions in the Sixth and Ninth Circuits without authority. In a series of decisions on the matter, *Foster v. Herley*, 330 F.2d 87 (6th Cir. 1964), *Foster v. City of Detroit*, 254 F.Supp. 655 (1966) aff'd 405 F.2d 138 (6th Cir. 1968), the Sixth Circuit held that an abuse of condemnation authority could constitute a taking. The Court recognized in *Sayre v. City of Cleveland*, 493 F.2d 64, 69 (6th Cir. 1974), however, that the decision "broke new ground when it held that abuse of the condemnation authority could constitute a taking." The Sixth Circuit in the *Sayre* case and *Woodland Market Realty Company v. City of Cleveland*, 426 F.2d 955 (6th Cir. 1970) limited significantly the impact of the *Foster* cases. Nevertheless, the principles of *Foster* have been extended and applied much more liberally by the Ninth Circuit in *Richmond Elks Hall Ass'n v. Richmond Redev. Agency*, 561 F.2d 1327 (9th Circuit 1977) and by the Eighth Circuit in its decision in *Garland* for which certiorari is being sought herein.

It is submitted that the extension of the de facto condemnation theory set out by these Circuits ought to be closely examined by the Supreme Court since, as has been pointed out above, the issue is an important one to the continued viability of programs of urban renewal throughout the nation. Additionally, a review of the Circuit decisions reveals considerable confusion and uncertainty in the application of legal standards enabling recovery. Unless criteria are established by the Supreme Court, continued confusion will prevail to the detriment of redevelopment programs for decayed urban areas.

4. **The Decision Is Inconsistent With a Decision Rendered in the Same Circuit Less Than Thirty Days After Issuance of the GARLAND Decision.**

The decision in this cause was issued by the Eighth Circuit on May 15, 1979 after being amended on denial of the City's

and Manley's motions for rehearing and rehearing en banc. In concluding that a cause of action has been stated against the City the Eighth Circuit either held that the legislative actions of the City alone were sufficient to establish a claim on a theory of de facto taking, which directly contravenes *Danforth, supra,* or the Court merged the purely legislative actions of the City with the acts of implementation by the private redevelopment corporation, Mercantile, that is not a party to the suit. The decision is most unclear on this point. This point is crucial to an understanding of the theory of recovery by cities throughout the Circuit. Assuming the decision is predicated on the latter approach, a theory of recovery for abuse of condemnation has been adopted against a defendant City which under the state and local renewal legislation is not authorized to acquire the property in the area through condemnation. All property acquisition under the urban renewal program legislation is to be accomplished by Mercantile, a private, limited profit, urban redevelopment corporation organized under the provisions of Chapter 353 of the Missouri Revised Statutes, Appendix C, *infra,* which is not a party to the complaint. Liability, if stated at all in the complaint, is affixed on the City for the actions of a private, non-party corporation.

This merger of liability against the City for the actions of Mercantile is wholly inconsistent with the Eighth Circuit's decision in *Ruby Young, Monroe Young, et al. v. Patricia Harris, et al.,* filed June 13, 1979. The decision, as yet unreported, is contained in Appendix F, *infra.* That decision reviews the legal relationship of the City with a 353 Urban Redevelopment Corporation, structured similarly to Mercantile, conducting renewal activities in another part of the City and concludes:

> ". . . we cannot say that the assistance provided by the city because of its desire to encourage and promote private redevelopment of blighted areas is sufficient to deprive the developer's project of its status as a private project; a contrary holding is clearly indicated."

It is submitted that this inconsistency within the Circuit itself lends further credence to the assertion by petitioner of the need for review by the Supreme Court.

Finally, it is submitted that review of this cause at this point would enable the Court to resolve the issues presented in the most straightforward manner. This cause has been decided on the pleadings with the result that the record to be reviewed is not burdened by extraneous questions of law and fact. Failure to decide the issues presented at this point will result in a proliferation of pleadings, amendments, orders and motions that will only serve to cloud the issues presented herein and make ultimate resolution more difficult.

CONCLUSION

For the above reasons, this Honorable Court should issue its writ of certiorari to review the decision of the Court of Appeals for the Eighth Circuit.

Respectfully submitted,

JACK L. KOEHR
City Counselor

JOSEPH R. NIEMANN
Assistant City Counselor

ROBERT H. DIERKER, JR.
Assistant City Counselor
Room 314 City Hall
St. Louis, Missouri 63103
622-3361

Attorneys for Petitioner,
City of St. Louis

APPENDIX

APPENDIX A

United States District Court
Eastern District of Missouri
Eastern Division

Thomas W. Garland, Inc.,
Plaintiff,

v.

City of St. Louis, et al.,
Defendants.

No. 78-129 C (3)

ORDER

(Filed May 23, 1978)

Pursuant to the memorandum filed this date,

IT IS HEREBY ORDERED that defendants' motions to dismiss be and are granted and that this cause be and is dismissed without prejudice.

/s/ JOHN F. NANGLE
United States District Judge

Dated: May 23, 1978

United States District Court
Eastern District of Missouri
Eastern Division

Thomas M. Garland, Inc.,
Plaintiff,
v.
City of St. Louis, et al.,
Defendants.
No. 78-129 C (3)

MEMORANDUM

(Filed May 23, 1978)

This matter is before the Court upon separate motions of defendants City of St. Louis and Manley Investment Company to dismiss plaintiff's complaint. Plaintiff has filed this suit, pursuant to 28 U.S.C. § 1331, seeking declaratory and monetary relief for an alleged taking of plaintiff's property.

Plaintiff's complaint alleges that on November 28, 1952, it entered into a lease of premises in the City of St. Louis for a term of thirty years, expiring December 4, 1982, at which it operates a retail store. On June 29, 1971, the Board of Aldermen of the City of St. Louis passed an ordinance providing that an area of the City, including plaintiff's leased premises, was blighted and should be redeveloped. On April 5, 1973, the Board of Aldermen passed an ordinance providing for a contract between the City and Mercantile Redevelopment Corporation. Under the provisions of the contract between these parties, Mercantile was to undertake a redevelopment of six city blocks, previously declared blighted, which included the block on which

plaintiff's premises are located. The ordinance further provided for the vacating of St. Charles Street as a public thoroughfare, a street used by plaintiff as the only means of ingress of commercial deliveries. The ordinance further granted to Mercantile the power to condemn property within the development area and provided that the City could exercise the power of condemnation within the redevelopment area.

On March 23, 1973, plaintiff alleges, agents for Mercantile advised plaintiff's officers that the leased premises would have to be vacated by September, 1974. Relying upon said statements, plaintiff proceeded to search for new premises. Plaintiff was unable to locate any suitable property in the downtown area of the City and instead relocated in three areas. It leased premises in West St. Louis County for its headquarters office, administrative offices, shipping and receiving functions and fur storage vault. To provide services for customers in Illinois who previously shopped in plaintiff's City facility, plaintiff leased a facility in Fairview Heights, Illinois. In order to provide a facility for customers south of the City, plaintiff leased facilities in South St. Louis County, Missouri.

Plaintiff alleges that defendant Manley Investment Co., as agent for Mercantile, began to acquire ownership of property in the area in 1973 and 1974. With the exception of plaintiff's store and a building south of plaintiff's store, the two-block area surrounding plaintiff's premises was stripped of its business and commercial enterprises. As a result, plaintiff alleges, the area has become blighted and the business character of the area has been destroyed. Sales have declined. Plaintiff alleges that there has been no further redevelopment because of a lack of proper financing.

Plaintiff asserts that it has been deprived of the full use and benefit of its leasehold interest. Plaintiff contends that there

has been a de facto taking of its leasehold interest as of April 1, 1974 and that it should be compensated therefor. Plaintiff further alleges that there is an impossibility of performance of its lease because of the actions of the City. Accordingly, it prays for monetary judgment against defendant City of St. Louis, as compensation for the taking of its leasehold interest and consequential damages allegedly resulting. Plaintiff further prays for a declaration that the lease between plaintiff and defendant Manley Investment Company is terminated, null and void.

The crux of plaintiff's complaint is that the actions of defendant City have resulted in a taking of plaintiff's leasehold interest without just compensation therefor, in violation of the Fifth and Fourteenth Amendments to the United States Constitution. Both defendants have filed motions to dismiss for failure to state a claim. Additionally, defendant Manley Investment Company asserts that this Court lacks jurisdiction as to the claim involving said defendant.

The general rule is that "[t]he mere enactment of legislation which authorizes condemnation cannot be a taking". *Danforth v. United States*, 308 U.S. 271, 286 (1939). In response to the impact that the pendency of such proceedings may have upon an area, however, courts have considered the delay and inaction of the condemning authority in determining the date for the valuing of the property condemned. See *Sayre v. City of Cleveland*, 493 F.2d 64 (6th Cir. 1974); 4 Nichols on Eminent Domain § 12.3151[5].

In *Foster v. Herley*, 330 F.2d 87 (6th Cir. 1964), however, the court held that the actions of the City may amount to a de facto taking of the property at a date prior to condemnation date. In *Foster*, the City had instituted condemnation proceedings. The use and management of the property had been frozen during the pendency of the proceedings. After tenants had vacated and the condition of the plaintiff's buildings had deteriorated, the City notified the plaintiff that the buildings would have to be demolished at the plaintiff's expense. Approximately two years later, or ten years after the condemnation proceedings were instituted, the City dismissed the condemnation proceedings. Thereafter, the City again started condemnation proceedings under the Federal Urban Renewal Program, under which the appraised value of the property would be based upon the condition of the property as it then existed, without buildings and in its depreciated state. The court held that the district court had jurisdiction, pursuant to 28 U.S.C. § 1331, to hear plaintiff's claim that his Fourteenth Amendment rights had been violated in that he had been deprived of his property without due process of law.

Since that decision, however, the Sixth Circuit has limited the circumstances in which the *Foster* holding may be applied. In *Sayre v. City of Cleveland, supra*, the City notified the property owner of its intention to obtain certain parcels of property. A resolution was passed declaring such intention and written notices were issued. The City, however, never acquired the property. The court held that

> . . . absent the extreme circumstances present in the *Foster* case, but lacking here, we think the true rule is that there is no de facto taking of properties which have decreased in value because of an urban renewal project unless there is a physical invasion, damage or injury, or a restraint of some type, or action by the City to appropriate such properties. *Id.* at 70.

The court further noted that in those cases in which a de facto taking was found, there was "a physical entry of the condemnor, or a physical ouster of the owner, or a legal interference with the physical use, possession or enjoyment of the

property or legal interference with the owner's power of disposition of the property". *Id.* quoting from *City of Buffalo v. J. W. Clement Co.*, 28 N.Y.2d 241 (1971). See also *Woodland Market Realty Company v. City of Cleveland*, 426 F.2d 955 (6th Cir. 1970); 4 Nichols on Eminent Domain § 12.3151[5].

It is clear that plaintiff has failed to state a claim herein. Plaintiff does not allege that there has been any physical entry or legal interference with its use or disposition of the property. All that plaintiff asserts is the threat of condemnation, its impact upon the area, and its impact upon the business activities of plaintiff. While such facts may affect the date determined for the valuation of the property in any subsequent condemnation proceedings, such assertion is insufficient to state a claim herein. *Cf., City of Buffalo v. Clement, supra.*

Accordingly, defendants' motions will be granted.

/s/ JOHN F. NANGLE
United States District Judge

Dated: May 23, 1978

APPENDIX B

United States Court of Appeals
For the Eighth Circuit

No. 78-1554

Thomas W. Garland, Inc.,
Appellant,

v.

The City of St. Louis and Manley Investment Company,
Appellees.

} Appeal from the United States District Court for the Eastern District of Missouri

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Submitted: December 15, 1978

Decided: February 28, 1979

As Amended on Denial of Rehearing and Rehearing En Banc, May 15, 1979

Before HEANEY and ROSS, Circuit Judges, and TALBOT SMITH, Senior District Judge.*

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* The Honorable TALBOT SMITH, Senior United States District Judge, Eastern District of Michigan, sitting by designation, participated in the post-argument conference and concurred in the decision resulting in this opinion prior to his death on December 21, 1978.

ROSS, Circuit Judge.

Plaintiff, Thomas W. Garland, Inc. (Garland), operates a retail clothing store on leased premises in the downtown business area of St. Louis, Missouri. In its complaint, filed January 30, 1978, Garland alleges that condemnation proceedings originating in April 1973 by the city of St. Louis have effected a de facto taking of plaintiff's leasehold for which plaintiff seeks just compensation under the fifth and fourteenth amendments to the Constitution. Garland joined Manley Investment Company (Manley) as a defendant in this action, as owner of the fee interest in the leased property, and alleges that the lease has become frustrated or impossible to perform and should be cancelled because of the city's de facto condemnation of the leasehold.

In May 1978 the district court[1] sustained the motions of both defendants to dismiss the complaint for failure to state a claim for relief, Fed. R. Civ. P. 12(b)(6). We reverse and remand for additional proceedings.

I

The complaint alleges that in June 1971, the city's Board of Aldermen passed Ordinance 55952 declaring an area of the city including plaintiff's leased premises blighted, and redevelopment of the area necessary. In April 1973, Ordinance 56476 was passed, designating Mercantile Center Redevelopment Corporation (Mercantile) as developer, approving a redevelopment plan submitted by Mercantile, incorporating a contract between the city and Mercantile and delegating to Mercantile the power of eminent domain for the purpose of carrying out the contract. The development agreement also provided for vacation of a street which had served as the only entrance to Garland's shipping and receiving dock behind the leased building.

---

[1] The Honorable John F. Nangle, United States District Judge for the Eastern District of Missouri.

Garland further alleges that in March 1973, agents for Mercantile ordered Garland to vacate its premises by September 1974 and that relying on this statement and public announcements concerning the redevelopment project, Garland leased other premises for its administrative offices, fur storage and shipping and receiving functions, as well as additional properties to be used as retail stores, all of such accommodations made at considerable expense.

Between 1973 and 1975 defendant Manley, as Mercantile's agent, acquired the fee interest in plaintiff's leased property and others in the area. Surrounding buildings were demolished by use of a "headache ball." Part of the two-block area surrounding plaintiff's premises has been converted to a parking lot, and part now consists of vacant buildings. Plaintiff asserts that the two-block area has been stripped of its business and commercial character, rendering plaintiff's leasehold useless.

In June 1978, plaintiff was denied leave to file an amended complaint. The proposed amendment sets forth greater detail concerning the impact on plaintiff's operations resulting from the acts of Manley, Mercantile and the city, alleging that the "headache ball" has caused structural damage to plaintiff's building. Debris from the demolition of surrounding buildings has blocked the entrance to plaintiff's loading dock, clogged its air conditioning system and covered its merchandise with dust. Doorways and sidewalks in the vicinity are not cleared of snow, ice and garbage, and pedestrians no longer frequent plaintiff's area.

Plaintiff contends that after destroying the economic value of the district, leaving plaintiff under a "cloud of condemnation" for five years and rendering plaintiff's leasehold useless, the city and Mercantile ceased redevelopment plans because the entire project had been inadequately financed. The city had failed to secure a detailed financing plan from Mercantile as required by

Section 29.080(15), Revised Code of St. Louis. Furthermore, although it was required under provisions of the City Charter to begin condemnation proceedings within six months after the effective date of the redevelopment ordinances and although its agents told plaintiff to vacate the premises, the city has failed to commence official condemnation of plaintiff's leasehold.

II

We review the dismissal of plaintiff's complaint in light of the following standards:

> [A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.
>
> * * * * * *
>
> [A] complaint should not be dismissed merely because a plaintiff's allegations do not support the particular legal theory he advances, for the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory. Nor should a complaint be dismissed that does not state with precision all elements that give rise to a legal basis for recovery. Finally, a complaint should not be dismissed merely because the court doubts that a plaintiff will prevail in the action. That determination is properly made on the basis of proof and not merely on the pleadings.

The question, therefore, is whether in the light most favorable to the plaintiff, the complaint states any valid claim for relief. Thus, as a practical matter, a dismissal under Rule 12(b)(6) is likely to be granted only in the unusual case in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.

Jackson Sawmill Co. v. United States, 580 F.2d 302, 306 (8th Cir.) (citations omitted), *petition for cert. filed*, 47 U.S.L.W. 3278 (U.S. Oct. 24, 1978) (No. 75-585).

The district court dismissed the complaint because plaintiff had failed to allege any physical invasion or appropriation of the property, stating:

> It is clear that plaintiff has failed to state a claim herein. Plaintiff does not allege that there has been any *physical entry* or *legal interference with its use or disposition of the property*. All that plaintiff asserts is the threat of condemnation, its impact upon the area, and its impact upon the business activities of plaintiff. While such facts may affect the date determined for the valuation of the property in any subsequent condemnation proceedings, such assertion is insufficient to state a claim herein.

(Emphasis added.) We do not agree with the district court that physical invasion or appropriation of the property is essential to a claim of de facto condemnation.

While the mere declaration of blight and other initial steps authorizing condemnation, even if they result in a decline in property values, do not constitute a taking requiring compensation to the property owner, *Danforth v. United States*, 308 U.S. 271, 286 (1939), governmental action short of acquisition or occupancy may constitute a constructive or de facto taking "if its effects are so complete as to deprive the owner of all or most of his interest in the subject matter." *United States v. General Motors Corp.*, 323 U.S. 373, 378 (1945). *See also Richmond Elks Hall Ass'n v. Richmond Redev. Agency*, 561 F.2d 1327 (9th Cir. 1977):

> When a public entity acting in furtherance of a public project directly and substantially interferes with property rights and thereby significantly impairs the value of the property, the result is a taking in the constitutional sense and compensation must be paid. * * *

> "[T]o constitute a taking under the Fifth Amendment it is not necessary that property be absolutely 'taken' in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights. * * * Nor need the government directly appropriate the title, possession or use of the properties. . . ."

Id. at 1330 (citations omitted).

In *Richmond*, the claimant's property was located within the area declared blighted by the city and designated for redevelopment. The redevelopment project was given wide publicity; a schedule for purchase of the subject properties was established, and the city's redevelopment agency began acquisition and demolition in the project area. As a result, property insurance and loan funds for improvements on the subject properties became unavailable. The claimant suffered damage to its building and a serious decline in rental income. After redevelopment ceased for lack of funds, the Ninth Circuit found that a compensable taking of the claimant's property had occurred because the actions of the city and its agency had rendered the property unsaleable in the open market and "its use for its intended purposes * * * severely limited." *Id.* at 1330.[2]

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[2] [A]s a result of Agency action, Elks' property was rendered unsaleable in the open market; its uses were severely limited by Agency; commercial lenders refused to make loans on the subject property; and Elks' peaceful enjoyment and its right to all rents and profits from the property were substantially impaired. *Given these consequences of Agency action, we conclude that Agency's interference with Elks' property rights was direct and substantial, and that the result of this interference was a significant reduction in the value of the subject property.* Therefore, we hold that Agency effected a compensable taking under the Fifth and Fourteenth Amendments of the United States Constitution.

Richmond Elks Hall Ass'n v. Richmond Redev. Agency, 561 F.2d 1327, 1331 (9th Cir. 1977) (emphasis added).

In *Foster v. Herley*, 330 F.2d 87 (6th Cir. 1964), the Sixth Circuit faced similar facts and reversed the lower court's dismissal of the complaint for failure to state a claim. The district court in the present action noted the *Foster* decision but considered it overruled or substantially restricted by two subsequent Sixth Circuit cases, *Sayre v. City of Cleveland*, 493 F. 2d 64 (6th Cir.), *cert. denied*, 419 U.S. 837 (1974) and *Woodland Market Realty Co. v. City of Cleveland*, 426 F.2d 955 (6th Cir. 1970).

The district court cited the following language in *Sayre:*

> [A]bsent the extreme circumstances present in the *Foster* case, but lacking here, we think the true rule is that there is no de facto taking of properties which have decreased in value because of an urban renewal project unless there is a physical invasion, damage or injury, or a restraint of some type, or action by the City to appropriate such properties.

Sayre v. City of Cleveland, supra, 403 F.2d at 70. However, in *Sayre* and *Woodland*, the subject properties had *not* been designated for acquisition and were merely adjacent to but *outside* of the redevelopment area. In *Sayre*, the Sixth Circuit explained the significance of the property's location in determining whether property has been constructively condemned:

> *Woodland Market* acknowledges the authority of the legislative body to draw its own lines around the property it wishes to condemn by eminent domain. And the crucial geographic boundary is not that around the general planning area or the project area, *but around the property that the city has demonstrated that it intends to appropriate.* Absent the abuse of eminent domain found in *Foster, including some action by the city indicating that the particular piece of property at issue is to be appropriated,* economic loss caused by urban renewal does not consti-

> tute a taking within the meaning of the fifth and fourteenth amendments.

Id. at 69 (emphasis added).

In *Clinton Street Greater Bethlehem Church v. City of Detroit*, 484 F.2d 185 (6th Cir. 1973), the Sixth Circuit further explained the scope of its prior ruling in *Foster v. Herley, supra*, and the *Foster* decision on remand, *Foster v. City of Detroit*, 254 F.Supp. 655 (E.D. Mich. 1966), *aff'd*, 405 F.2d 138 (6th Cir. 1968).

> The *important distinction between the appellant's alleged harm and the problems encountered by Mr. Foster is that all of Mr. Foster's problems stemmed from his being subject to the 1950 condemnation action. See* 330 F.2d at 88. The affirmative acts of the City which led the District Court to conclude that a taking had occurred prior to 1962 were all actions taken by the City in accordance with a condemnation action which it later abandoned, and including informing Mr. Foster that he would receive no compensation for improvements, advising him only to "keep the roof on and the water running"; requiring him to sign a waiver of claim for damages as a condition precedent to the issuance of a building permit (but waiving any claim to the increased value of the property as a result of the proposed improvements), completing the condemnation and clearance of several blocks in the area, and keeping the notice of lis pendens in effect for five years after the issuance of the stop order on the project, while at the same time, telling those who inquired that the property would be condemned soon. 254 F.Supp. at 662.
>
> None of these factors pertain to this appellant, since this appellant was not subject to the 1950 condemnation action.

Clinton Street Greater Bethlehem Church v. City of Detroit, supra, 484 F.2d at 188 (emphasis added). *See also Benenson*

v. United States, 548 F.2d 939, 947-52 (Ct.Cl. 1977); *Drakes Bay Land Co. v. United States*, 424 F.2d 574, 584 (Ct.Cl. 1970).

We therefore find that the district court's interpretation of the requirements for a claim of de facto condemnation were too restrictive. Accordingly, we remand with directions to reinstate plaintiff's claim against the city for resolution on its merits.[3]

II

The district court did not specify its reasons for dismissing plaintiff's claim against Manley. However, the action against Manley lacked an independent basis for federal court jurisdiction, and the federal claim against the city was dismissed before trial. Thus presumably the district court relied on the Supreme Court's statement in *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966) that "if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well."

Because we reinstate Garland's claim against the city, one of the obstacles[4] to entertaining jurisdiction over plaintiff's ac-

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[3] We suggest that on remand plaintiff should be permitted to file its amended complaint. In addition, we direct that on remand, the district court shall resolve the issue of the city's liability, if any, for the acts of Mercantile. The city disclaims any liability for the alleged de facto condemnation or abuse of the power of eminent domain, contending that its delegation to Mercantile of the power to condemn the subject property absolved the city of any further responsibility. Garland contends that Mercantile acted at all times as the city's agent.

[4] Plaintiff seeks to append its state-law claim against Manley, an ancillary defendant for whom no independent basis of federal jurisdiction is alleged, to plaintiff's federal question claim against the city. The claims are based on the same operative facts and circumstances. However, plaintiff has not asserted that Manley is a neces-

tion against Manley is removed. The district court should therefore determine whether, in light of the guidelines established in *Owen Equip. and Erection Co. v. Kroger*, 437 U.S. 365 (1978) and *Aldinger v. Howard*, 427 U.S. 1 (1976), it may exercise ancillary, i.e., pendent party, jurisdiction over the state-law claim against Manley. If the court finds that this is a proper case for the exercise of ancillary jurisdiction, it must decide whether, under the Missouri law of frustration of purpose or impossibility of performance, plaintiff has stated a claim for cancellation of the remainder of its lease.

Reversed and remanded for further proceedings consistent with this opinion.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

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sary party to resolution of the inverse condemnation claim against the city or that its claim against Manley involves a general federal question.

The Supreme Court has not yet indicated whether pendent party jurisdiction may be exercised when primary jurisdiction is founded on 28 U.S.C. §1331(a). The district court should decide whether it has the power to assume ancillary jurisdiction over the claim against Manley, and if so, whether it should elect to do so. The issue may be clarified if plaintiff is permitted to amend its complaint to show, if it can do so, additional facts upon which it may rely to justify retaining Manley as an ancillary party.

APPENDIX C

Chapter 353

URBAN REDEVELOPMENT CORPORATIONS LAW

353.010. Citation of chapter—application

This chapter shall be known and may be cited and referred to as "The Urban Redevelopment Corporations Law", and shall apply to all cities in this state which now or which may hereafter contain a population of four thousand inhabitants or more, according to the last preceding federal decennial census and all constitutional charter cities.
Amended by Laws 1969, p. 501, § 1; Laws 1976, p. 729, § 1.

353.020. Definitions

The following terms, whenever used or referred to in this chapter shall, unless a different intent clearly appears from the context, be construed to have the following meaning:

(1) **"Area"** shall mean that portion of the city which the legislative authority of such city has found or shall find to be blighted, so that the clearance, replanning, rehabilitation, or reconstruction thereof is necessary to effectuate the purposes of this law. Any such area may include buildings or improvements not in themselves blighted, and any real property, whether improved or unimproved, the inclusion of which is deemed necessary for the effective clearance, replanning, reconstruction or rehabilitation of the area of which such buildings, improvements or real property form a part;

(2) **"Blighted area"** shall mean that portion of the city within which the legislative authority of such city determines that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, have become economic and social liabilities, and that such conditions are conducive to ill health,

transmission of disease, crime or inability to pay reasonable taxes;

(3) **"City"** or **"such cities"** shall mean cities in this state which now have or which may hereafter have a population of four thousand inhabitants or more according to the last preceding federal decennial census and all constitutional charter cities;

(4) **"Development plan"** shall mean a plan, together with any amendments thereto, for the development of all or any part of a blighted area, which is authorized by the legislative authority of any such city;

(5) **"Legislative authority"** shall mean the city council or board of aldermen of the cities affected by this law;

(6) **"Mortgage"** shall mean a mortgage, trust indenture, deed of trust, building and loan contract, or other instrument creating a lien on real property, to secure the payment of an indebtedness, and the indebtedness secured by any of them;

(7) **"Real property"** shall include lands, buildings, improvements, land under water, waterfront property, and any and all easements, franchises and hereditaments, corporeal or incorporeal, and every estate, interest, privilege, easement, franchise and right therein, or appurtenant thereto, legal or equitable, including restrictions of record, created by plat, covenant, or otherwise, rights-of-way, and terms for years;

(8) **"Redevelopment"** shall mean the clearance, replanning, reconstruction or rehabilitation of any blighted area, and the provision for such industrial, commercial, residential or public structures and spaces as may be appropriate, including recreational and other facilities incidental or appurtenant thereto;

(9) **"Redevelopment project"** shall mean a specific work or improvement to effectuate all or any part of a development plan;

(10) **"Urban redevelopment corporation"** shall mean a corporation organized under the provisions of this chapter; provided, however, that any life insurance company organized under the laws of, or admitted to do business in, the state of Missouri may from time to time within five years after April 23, 1946, undertake, alone or in conjunction with, or as a lessee of any such life insurance company or urban redevelopment corporation, a redevelopment project under this chapter, and shall, in its operations with respect to any such redevelopment project, but not otherwise, be deemed to be an urban redevelopment corporation for the purposes of this section and sections 353.010, 353.040, 353.060 and 353.110 to 353.160.

Amended by Laws 1969, p. 501, § 1, Laws 1976 p. 729, § 1.

353.030. Organization of corporation—contents of articles of agreement

Corporations referred to in this chapter as urban redevelopment corporations may be organized in the following manner: The articles of agreement or association shall be prepared, subscribed or acknowledged, and filed in the office of the secretary of state pursuant to the general corporations laws of the state and shall contain:

(1) The name of the proposed corporation, which must have the words "redevelopment corporation" as a part thereof.

(2) The purposes for which it is formed which shall be as follows: To acquire, construct, maintain and operate a redevelopment project or redevelopment projects in accordance with the provisions of this law.

(3) The amount of the capital stock, and if any be preferred stock the preference thereof.

(4) The number of shares of which the capital shall consist all of which shall have a par value.

(5) The city in which its principal business office is to be located.

(6) Its duration, which shall not exceed ninety-nine years.

(7) The number of directors, which shall not be less than three, nor more than thirteen.

(8) The names and post-office addresses of the directors for the first year, at least one of whom shall be a resident of the state of Missouri.

(9) The names and post-office addresses of the subscribers to the articles of association or agreement.

(10) A provision that in the event that income debenture certificates are issued by the corporation, the owners thereof shall have the same right to vote as they would have if possessed of certificates of stock of the amount and par value of the income debenture certificates held by them. The articles may provide for the retirement of income debenture certificates or preferred stock of the corporation as and when there shall be funds available in the treasury of the corporation from the receipt of amortization or sinking fund in installments for the purpose. Interest shall not be paid by the corporation upon such income debenture certificates in excess of nine percent per annum. Provided, however, that this limitation shall not apply to other debt of the corporation.

(11) A declaration that the corporation has been organized to serve a public purpose; that all real estate acquired by it and all structures erected by it are to be acquired for the purpose of promoting the public health, safety and welfare, and that the stockholders of the corporation shall when they subscribe to and receive the stock thereof, agree that the net earnings of the corporation shall be limited to an amount not to exceed eight percent per annum of the cost to such corporation of the redevelopment project including the cost of the land, or the balances of such cost as reduced by amortization payments; provided, that the net earnings derived from any redevelopment project shall in no event exceed a sum equal to eight percent per annum upon the entire cost thereof. Such net earnings shall be computed after deducting from gross earning the following:

(a) All costs and expenses of maintenance and operation;

(b) Amounts paid for taxes, assessments, insurance premiums and other similar charges;

(c) An annual amount sufficient to amortize the cost of the entire project at the end of the period, which shall not be more than sixty years from the date of completion of the project. The development plan may contain provisions satisfactory to the legislative authority authorizing such plan that any surplus earnings in excess of the rate of net earnings provided in this chapter may be held by the corporation as a reserve for maintenance of such rate of return in the future and may be used by the corporation to offset any deficiency in such rate of return which may have occurred in prior years; or may be used to accelerate the amortization payments; or for the enlargement of the project; or for reduction in rentals therein; provided, that any excess of such surplus earnings remaining at the termination of the tax relief granted pursuant to section 353.110 shall be turned over by the corporation to the city.

(12) A declaration that such corporations are recognized for the purpose of the clearance, replanning, reconstruction or rehabilitation of blighted areas, and the construction of such industrial, commercial, residential or public structures as may be appropriate, including provisions for recreational and other facilities incidental or appurtenant thereto.

Amended by Laws 1969, p. 501, § 1; Laws 1974, 2nd Ex.Sess., p. . . , S.B.No.1, § 1, effective Jan. 9, 1975.

353.040. Life insurance company operating as urban redevelopment corporation—limitation on earnings—disposition of surplus

1. Any life insurance company operating as an urban redevelopment corporation under this chapter shall be limited in its net earnings derived exclusively from the ownership or operation

of any redevelopment project on real property owned by, or leased to, any such life insurance company, and constructed pursuant to a redevelopment plan to an amount not to exceed eight per cent per annum of the cost to such company of the redevelopment project including the cost of the land, or the balances of such cost as reduced by amortization payments; provided, that the net earnings derived from any redevelopment project shall in no event exceed a sum equal to eight per cent per annum upon the entire cost thereof. Such net earnings shall be computed after deducting from gross earnings the following:

(1) All costs and expenses of maintenance and operation;

(2) Amounts paid for taxes, assessments, insurance premiums and other similar charges;

(3) An annual amount sufficient to amortize the cost of the entire project at the end of the period, which shall be not more than sixty years from the date of completion of the project.

2. The development plan may contain provisions satisfactory to the legislative authority authorizing such plan that any surplus earnings in excess of the rate of net earnings provided in this chapter may be held by the company as a reserve for maintenance of such rate of return in the future and may be used by the company to offset any deficiency in such rate of return which may have occurred in prior years; or may be used to accelerate the amortization payments; or for the enlargement of the project; or for reduction in rentals therein; provided, that any excess of such surplus earnings remaining at the termination of the tax relief granted pursuant to section 353.110 shall be turned over by the company to the city. (L.1945 p. 1242 § 4; L.1947 V. I p. 393)

353.050. Use of word "redevelopment" prohibited—exceptions

No corporation now organized under the laws of this state shall change its name to a name, and no such corporation here-

after organized shall have a name, containing the word "redevelopment" as a part thereof except as provided in this chapter. No foreign corporation now authorized to do business in this state shall change its name to a name, and no such corporation shall hereafter be authorized to do business in the state with a name containing the word "redevelopment" as a part thereof. (L.1945 p. 1242 § 5)

353.060. Urban redevelopment corporation may operate one or more development projects—powers

An urban redevelopment corporation shall operate under this chapter on one or more redevelopment projects pursuant to an authorized development plan, and with respect to each such project shall have such rights, powers, duties, immunities and obligations, not inconsistent with the provisions of this law, as may be conferred upon it by city ordinance duly enacted by the legislative authority of a city affected by this chapter which is authorizing or has authorized such plan; provided, however, that notwithstanding the provisions of this section, such urban redevelopment corporation may, as a redeveloper under the provisions of the land clearance for redevelopment authority law, acquire property, by purchase or lease, from a land clearance for redevelopment authority as defined in said law, in the manner and under the terms and conditions specified in said law. (L. 1945 p. 1242 § 6; L.1951, p. 364, § 1)

353.070. General corporation laws unless conflicting apply

The provisions of the general corporation laws, as presently in effect and as hereafter from time to time amended, shall apply to urban redevelopment corporations, except where such provisions are in conflict with the provisions of this law. (L.1945 p. 1242, § 7)

353.080. Notice of meetings to holders of income debentures

In the event that any action with respect to which the holders of income debentures shall have the right to vote is proposed to

be taken, notice of any meeting at which such action is proposed to be taken shall be given to such holders in the same manner and to the same extent as if they were stockholders entitled to notice of and to vote at such meeting, and any articles filed pursuant to law in the office of the secretary of state with respect to any such action, whether taken with or without meeting, and any affidavit required by law to be annexed to such articles shall contain the same statements or recitals, and such articles shall be subscribed and acknowledged, and such affidavit shall be made, in the same manner as if such debenture holders were stockholders holding shares of an additional class of stock entitled to vote on such action, or with respect to the proceedings provided for in such document. (L.1945 p. 1242 § 7)

353.090. Maintain reserves for specific purposes

An urban redevelopment corporation shall establish and maintain depreciation, obsolescence, and other reserves, also surplus and other accounts, including, among others, a reserve for the payment of taxes according to recognized standard accounting practices. (L.1945 p. 1242 § 8)

353.100. When corporation may pay interest on its income debentures or dividends on its stock

No urban redevelopment corporation shall pay any interest on its income debentures or dividends on its stock during any dividend year unless there shall exist at the time of such payment no default under any amortization requirements with respect to its indebtedness, nor unless all accrued interest, taxes and other public charges shall have been duly paid or reserves set up for the payment thereof, and adequate reserves provided for depreciation, obsolescence and other proper reserves. (L.1945 p. 1242 § 9)

353.110. Real property exempt from taxation—limitation

1. The real property of urban redevelopment corporations acquired pursuant to this chapter shall not be subject to assess-

ment or payment of general ad valorem taxes imposed by the cities affected by this law, or by the state or any political subdivision thereof, for a period of ten years after the date upon which such corporations become owners of such real property, except to such extent and in such amount as may be imposed upon such real property during said period measured solely by the amount of the assessed valuation of the land, exclusive of improvements, acquired pursuant to this chapter and owned by such urban redevelopment corporation, as was determined by the assessor of the county in which such real property is located, or, if not located within a county, then by the assessor of such city, for taxes due and payable thereon during the calendar year preceding the calendar year during which the corporation acquired title to such real property, and the amounts of such tax assessments shall not be increased during said ten-year period so long as the real property is owned by an urban redevelopment corporation and used in accordance with a development plan authorized by the legislative authority of such cities.

2. In the event, however, that any such real property was tax exempt immediately prior to ownership by any urban redevelopment corporation, such assessor or assessors shall, upon acquisition of title thereto by the urban redevelopment corporation, promptly assess said land, exclusive of improvements, at such valuation as shall conform to but not exceed the assessed valuation made during the preceding calendar year of other land, exclusive of improvements, adjacent thereto or in the same general neighborhood, and the amount of such assessed valuation shall not be increased during the ten-year period aforesaid so long as the real property is owned by an urban redevelopment corporation and used in accordance with a development plan authorized by the legislative authority of such cities. For the next ensuing period of fifteen years ad valorem taxes upon such real property shall be measured by the assessed valuation thereof as determined by such assessor or assessors upon the basis of not to exceed fifty per cent of the true value of such real property,

including any improvements thereon, nor shall such valuations be increased above fifty per cent of the true value of such real property from year to year during said period of fifteen years, so long as the real property is owned by an urban redevelopment corporation and used in accordance with an authorized development plan. After said period totalling twenty-five years, such real property shall be subject to assessment and payment of all ad valorem taxes, based on the full true value of the real property; provided, that after the completion of the redevelopment project, as authorized by law or ordinance whenever any urban redevelopment corporation shall elect to pay full taxes, or at the expiration of said twenty-five-year period, such real property shall be owned and operated free from any of the conditions, restrictions or provisions of this chapter, and of any ordinance, rule or regulation adopted pursuant thereto, and other law limiting the right of domestic and foreign insurance companies to own and operate real estate to the contrary notwithstanding. (L.1945 p. 1242 § 10; L.1947 V. I p. 393)

353.120. Transfer by fiduciaries and public agencies of real property to a redevelopment corporation

Notwithstanding any requirement of law to the contrary, or the absence of direct provision therefor in the instrument under which a fiduciary is acting, every executor, administrator, trustee, guardian or any other person, holding trust funds or acting in a fiduciary capacity, unless the instrument under which such fiduciary is acting expressly forbids, also the state, its subdivisions, cities, all other public bodies, all public officers, corporations, organized under or subject to the provisions of the banking law (including savings banks, savings and loan associations, trust companies, private bankers and private banking corporations), the state commissioner of finance as conservator, liquidator or rehabilitator of any such person, partnership or corporation, person, partnership and corporations organized under or subject to the provisions of the insurance law, the superintendent

of insurance as conservator, liquidator, or rehabilitator of any such person, partnership or corporation, any of which owns or holds any real property within any blighted area proposed to be cleared or redeveloped by an urban redevelopment corporation, may grant, sell, lease or otherwise transfer any such real property to an urban redevelopment corporation, and receive and hold any cash, mortgages, or other securities or obligations exchanged therefor by such urban redevelopment corporations, and may execute such instruments and do such acts as may be deemed necessary or desirable by them or it and by the urban redevelopment corporations in connection with the development and any development plan. (L.1945, p. 1242 § 11)

353.130. Redevelopment corporation may acquire property

1. An urban redevelopment corporation may acquire real property or secure options in its own name or, in the name of nominees, it may acquire real property by gift, grant, lease, purchase, or otherwise.

2. An urban redevelopment corporation shall have the right to acquire by the exercise of the power of eminent domain any real property in fee simple or other estate which is necessary to accomplish the purpose of this chapter, under such conditions and only when so empowered by the legislative authority of the cities affected by this chapter.

3. An urban redevelopment corporation may exercise the power of eminent domain in the manner provided for corporations in chapter 523, RSMo; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provision for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to any city, county, or the state, or any political subdivision thereof may be acquired without its consent. (L.1945, p. 1242 § 12)

353.140. Occupancy of property acquired by corporation by previous owners—conditions

When title to real property has been vested in an urban redevelopment corporation by gift, grant, devise, purchase, or by condemnation proceedings or otherwise, the urban redevelopment corporation may agree with the previous owners of such property, or any tenants continuing to occupy or use it, or any other persons who may occupy or use or seek to occupy or use such property, that such former owner, tenant or other persons may occupy or use such property upon the payment of a fixed sum of money for a definite term or upon the payment periodically of an agreed sum of money. Such occupation or use shall not be construed as a tenancy from month to month, nor require the giving of notice by the urban redevelopment corporation for the termination of such occupation or use or the right to such occupation or use, but immediately upon the expiration of the term for which payment has been made the urban redevelopment corporation shall be entitled to possession of the real property and may maintain an action for either unlawful detainer or ejectment for the purpose of recovering immediate possession thereof. (L.1945 p. 1242 § 13; L.1949 H.B.No.2081)

353.150. Borrowing of money and giving of security by corporation

1. Any urban redevelopment corporation may borrow funds and secure the repayment thereof by mortgage which shall contain reasonable amortization provisions and shall be a lien upon no other real property except that forming the whole or a part of a single development area.

2. Certificates, bonds and notes, or part interest therein, or any part of an issue thereof, which are secured by a first mortgage on the real property in a development area, or any part thereof, shall be securities in which all of the following persons,

partnerships, or corporations and public bodies or public officers may legally invest the funds within their control:

(1) Every executor, administrator, trustee, guardian, committee or other person or corporation holding trust funds or acting in a fiduciary capacity;

(2) Persons, partnerships and corporations organized under or subject to the provisions of the banking law (including savings banks, savings and loan associations and trust companies);

(3) The state commissioner of finance as conservator, liquidator or rehabilitator of any such person, partnership or corporation;

(4) Persons, partnerships or corporations organized under or subject to the provisions of the insurance law; fraternal benefit societies; and

(5) The state superintendent of insurance as conservator, liquidator or rehabilitator of any such person, partnership or corporation.

3. Any mortgage on the real property in a development area, or any part thereof, may create a first lien, or a second or other junior lien, upon such real property.

4. Any urban redevelopment corporation may sell or otherwise dispose of any or all of the real property acquired by it for the purposes of a redevelopment project. In the event of the sale or other disposition of real property of any urban redevelopment corporation by reason of the foreclosure of any mortgage or other lien, through insolvency or bankruptcy proceedings, by order of any court of competent jurisdiction, by voluntary transfer or otherwise, and the purchaser of such real property of such redevelopment corporation shall continue to use, operate and maintain such real property in accordance with the provisions of

any development plan, the legislative authority of any city affected by the provisions of this chapter, may grant the partial tax relief provided in section 353.110; but if such real property shall be used for a purpose different than that described in the redevelopment plan, or in the event that the purchaser does not desire the property to continue under the redevelopment plan, or if the legislative authority shall refuse to grant the purchaser continuing tax relief, the real property shall be assessed for ad valorem taxes upon the full true value of the real property and may be owned and operated free from any of the conditions, restrictions or provisions of this chapter. (L.1945 p. 1242 § 14)

353.160. May accept grants or loans from the United States government

Any urban redevelopment corporation may accept grants or loans of money from the government of the United States or any department or agency thereof. (L.1945 p. 1242 § 15)

353.170. City may acquire, clear, convey or lease property for use in redevelopment project

Any city subject to this chapter shall have power:

(1) To acquire by the exercise of the power of eminent domain, or otherwise, an area designated on a master plan under the authority of the legislative authority of the city as a redevelopment area;

(2) To clear any such real property and install, construct, and reconstruct streets, utilities and any and all other city improvements necessary for the preparation of such area for use in accordance with the provisions of this chapter; and

(3) To sell or lease such real property for use in accordance with the provisions of this chapter. (L.1945 p. 1242 § 16)

353.180. Any corporation may purchase shares of stock of urban redevelopment corporation

Any corporation organized under the laws of the state of Missouri, or admitted to do business in the state of Missouri, shall have power to purchase any or all of the shares of stock of an urban redevelopment corporation organized under the provisions of this chapter. (L.1945 p. 1242 § 17)

APPENDIX D

In the United States District Court
Eastern District of Missouri
Eastern Division

Thomas W. Garland, Inc., a Missouri Corporation, Plaintiff, v. The City of St. Louis, a Constitutional Charter City of the State of Missouri, and Manley Investment Company, a Missouri Corporation, Defendants.	Civil Action No. 78-0129-C(3)

COMPLAINT

(Filed January 30, 1978)

1. This action arises under the Constitution of the United States, Amendment V, and Amendment XIV of the Constitution of the United States as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.00. Jurisdiction is thereof being conferred upon this Court by Section 1331, Title 28, United States Code.

2. Plaintiff is a corporation duly organized and existing under the laws of the State of Missouri, with its main office location in the City of St. Louis, State of Missouri, at 410 North Sixth Street, and hereinafter referred to as "Garland's".

3. Defendant The City of St. Louis is a municipal corporation organized and existing as a Constitutional Charter City under the laws of the State of Missouri and hereinafter referred to as "The City".

4. Defendant Manley Investment Company is a Missouri corporation duly organized under the laws of the State of Missouri, whose registered agent is W. David Wells, One Mercantile Center, Suite 3400, St. Louis, Missouri 63101, and hereinafter referred to as "Manley". Manley is made a party to this action because it now owns the fee title to property involved herein.

5. Since 1895 Garland's has been in the business of operating women's ready-to-wear stores in the downtown business area of the City of St. Louis at or near its present location. On November 28, 1952, Garland's entered into a lease of the premises in City Block 118 of the City of St. Louis, Missouri, known and numbered as 410-414 North Sixth Street. The term of the lease was for thirty years, commencing December 5, 1952, and expiring December 4, 1982, the annual rent being $50,400.00 plus all taxes levied. It has been defined as a net, net lease.

6. Garland's operates a retail store at the leased premises and part of the premises serves as the company headquarters, which includes its administrative offices and shipping and receiving department, providing the necessary administration support for the retail store located there and other branch stores located in the City and County of St. Louis, Missouri, and its recently acquired retail store in Illinois. Until on or about April 1, 1974, the leased premises also contained Plaintiff's fur storage vault. The annual gross sales of the retail store located on the above-described leased premises during the years 1971, 1972 and 1973 were approximately $1 million. Substantial amounts of money have been invested by Plaintiff in

the physical improvements of the described leased premises to provide facilities for the operation of the retail store and the portion of the leased premises used for company headquarters, administrative operations, shipping and receiving department, and fur storage vault. Additional physical improvements have been made by way of repairs to maintain and to upgrade the building in its continuing use, and other improvements have been made to meet the requirements set forth in the lease and meet the standards required by ordinances of Defendant The City.

7. On or about June 29, 1971, the Board of Aldermen of The City of St. Louis passed Ordinance No. 55952, which became law, providing that the entire downtown business area of the City of St. Louis, with some exceptions, was blighted as defined in Section 29.020, Revised Code of the City of St. Louis, Missouri, and that such area should be redeveloped as provided for by Chapter 353 of Missouri Revised Statutes 1969. The leased premises of Garland's at 410-414 North Sixth Street are included in the area described by this ordinance as being blighted. A copy of said ordinance is attached hereto as Exhibit "A" and by this reference incorporated herein as if more fully set forth.

8. On or about April 5, 1973, the Board of Aldermen passed Ordinance No. 56476, which became law, providing for a contract between The City and Mercantile Center Redevelopment Corporation (hereinafter referred to as "Mercantile"). Mercantile is a corporation which was duly organized in the State of Missouri as of October 10, 1972, with a capital of $30,000.00, under the Urban Redevelopment Corporation laws of Missouri. Under the terms of the contract approved by Ordinance No. 56476 Mercantile was to undertake a $150 million redevelopment of six city blocks of the downtown business area previously declared blighted, which included City Block 118 wherein is located the Garland's leased store. The

ordinance also provides for the vacating of St. Charles Street, a one-way street, as a public thoroughfare which is used by Garland's as the only means of ingress of commercial delivery vehicles into the shipping and receiving area located on the alley behind the leased building. Much publicity and many public announcements were made of the passing of the ordinance and proposed redevelopment project. The ordinance also purports to grant to Mercantile the power to condemn property which was included in the proposed redevelopment area. The ordinance also provides that The City can also exercise the power of condemnation in the proposed redevelopment area. A copy of said ordinance is attached hereto as Exhibits "B-1" and "B-2" and by this reference incorporated herein as if more fully set forth. (Two different copies of the ordinance were published bearing the same date.)

9. On or about March 23, 1973, and thereafter, agents for Mercantile advised and stated to Garland's officers that they would need Garland's leased property vacated by September, 1974, in order to proceed with the development of the two city block area, which includes City Blocks 118 and 119. Phase II of the redevelopment, under the terms of the Redevelopment Contract, Ordinance No. 56476, required Mercantile to erect a hotel of twenty-five stories with approximately 800 rooms and self-contained parking for 200 cars, containing a gross floor area of approximately one million square feet in the said City Blocks 118 and 119. This phase of redevelopment was to commence not later than April 5, 1976.

10. Commencing in the spring of 1973 Garland's, relying on the statements made to it by the agents of Mercantile and the terms and provisions of the contract under Ordinance No. 56476 between The City and Mercantile that it would be required to vacate its premises in City Block 118 by September, 1974, immediately undertook efforts to locate new space to replace, in the downtown business area of the City of St. Louis

and elsewhere, its business premises scheduled to be taken as a part of the redevelopment plan. Garland's found none available to it in the City of St. Louis downtown area because, among other things, the entire downtown business area, with few exceptions, had been declared blighted by The City and rental costs in the redeveloped facilities, including the Mercantile Center Redevelopment Corporation's new proposed developments, were too high to economically support a business of the type operated by Plaintiff. Garland's then found and leased on or about August 22, 1973, premises in West St. Louis County for its headquarters office, administrative offices, shipping and receiving functions and fur storage vaults. On or about April 1. 1974, Garland's, having constructed a new fur storage vault on the said premises, physically moved that portion of its operation from the store located in City Block 118. Also, to provide retail facilities to its many East Side (Illinois) customers and replace the store on the leased premises in City Block 118 which had been patronized by them, Plaintiff on or about December 10, 1973, entered into a lease for a retail store in Fairview Heights, Illinois, in the St. Clair Square Shopping Center. Additionally, to replace the retail store in City Block 118 and provide facilities for the many Southeast Missouri and Southwest Illinois customers who used the arterial highway system to patronize the store at 410-414 North Sixth Street, Garland's entered into a lease for a retail store in the South County Shopping Center located in South St. Louis County, Missouri, on or about November 29, 1974. Plaintiff had to expend approximately $490,000.00 for capital improvements to prepare these three facilities for occupancy.

11. All of the undertakings set forth in Paragraph 10 were required to prevent a material disruption of Plaintiff's business and substantial economic loss which would have occurred as a direct result of the loss of the leased premises located in the proposed redevelopment area of City Block 118. They were all undertaken at that time in reliance on the statements made to

Plaintiff's officers by agents of Mercantile that the property would have to be vacated by September, 1974, and in consideration of the terms and provisions of the contract between The City and Mercantile. Such expansion was not in accordance with the normal methods of operation and opening new stores by Garland's because it required the use of a large amount of borrowed capital to finance the construction of improvements and, further, because of the marginal operations of new stores until they have time to build up a trade at a new location, normally a period of three to five years, during which time they are not economically self-supporting. Such undertakings strained the financial resources of Garland's.

12. Defendant Manley, incorporated under Missouri law on May 10, 1972, with an authorized capital of $30,000.00, to the best of Plaintiff's knowledge, information and belief, commenced in 1973 and 1974 to acquire the ownership of the property in City Blocks 118 and 119, as agent for Mercantile, and caused the properties to be vacated and the buildings thereon wrecked by the "headache ball" method. With the exception of Garland's store and a jewelry company which moved to the building south of Garland's, the entire two block area was stripped of its business and commercial enterprises. That part of City Block 118 behind Plaintiff was turned into a parking lot and the stores and buildings along Sixth Street in City Blocks 118 and 119, with the exception noted above, are vacant buildings, a couple of which have recently been rented on short-term indefinite bases. The effect of these actions by The City in blighting the area and scheduling the redevelopment of City Blocks 118 and 119 by the terms of the contract with Mercantile was a destruction of the business character of the east side of Sixth Street and the area surrounding the Garland store in City Block 118. Condemnation blight has taken over the two city blocks area making Garland's leased premises unattactive for the use for which it was leased. All of these acts by The City have deprived Garland's of the full use and economic value of its lease. All the changes were made for

the purpose of carrying out the plan of redevelopment and were being done by The City under its authority for the public purpose of clearing and developing an area The City claims to be blighted. On January 22, 1975, Manley acquired the fee interest to the premises known as 410-414 North Sixth Street, subject to Garland's lease. As a direct result of these acts of The City in blighting and authorizing the removal of buildings and granting right of condemnation for the purpose of redevelopment, sales in the Garland store located on the said premises have consistently declined since 1973, while sales in its other stores have shown an increase, the area around Plaintiff's premises in City Block 118 has been economically depressed, and since April 1, 1974, Plaintiff has been deprived of the full use and benefit of its leasehold interest in the said property.

13. The City, though taking actions which destroyed the economic value of Plaintiff's leasehold for a public purposes, has never offered to purchase or compensate Garland's for the taking of its leasehold interest. The City, by passing Ordinances No. 55952 and No. 56476 and by contracting with Mercantile to redevelop the area in City Blocks 118 and 119, effected a de facto, if not an actual, condemnation of Garland's leasehold interest as of April 1, 1974. Since that date Plaintiff's leasehold has been deprived of its economic value for which it should be compensated according to law. As a direct result of such taking and delay in proceeding with the condemnation, The City has caused consequential damages in addition to the actual damages for the taking of the leasehold interest by causing Plaintiff to have to continue to pay taxes, rent, insurance and maintenance on the premises for a portion of the year 1974 and the years 1975, 1976 and 1977. Plaintiff will continue to suffer such consequential damages until its leasehold has been legally terminated and compensated for according to law.

14. The law of Missouri as stated by the Missouri Supreme Court is that there is no condemnation until the actual filing of

suit and payment of Commissioner's Award for the property and passing of title. The time for commencing the phase of redevelopment encompassing City Blocks 118 and 119 has now passed and, except for the removing of buildings and business from the area, the boarding-up of vacant buildings, no further action of redevelopment is presently planned because of lack of proper financing required by the project. Plaintiff, relying on the requirements of the redevelopment ordinance and relying on the representations of the agents of the redevelopment corporation, has expended large sums of money to acquire facilities to replace the leasehold taken and, as a direct result of the delay in proceeding with the plan, is still being forced to operate the facilities it replaced. The City has created condemnation blight in the area around Plaintiff's leasehold property which has destroyed the economic value, benefit and full use of the lease and hence Plaintiff is being deprived of its property by Defendant City of St. Louis for a public purpose, and it has taken Garland's property for a public use as stated in the above-referenced ordinance without just compensation, all of which are a direct violation of the Fifth Amendment of the Constitution of the United States and the Fourteenth Amendment of the Constitution of the United States. In causing and permitting the threat of condemnation to hang over Plaintiff's leasehold property and the action of The City in destroying the commercial character of the two City Blocks 118 and 119 by permitting condemnation blight to set into the said area for a period of over four years was an abuse of the power of eminent domain, which deprived Plaintiff of the full use and benefit and right to exercise the full rights under its leasehold interest in the said property, amounting to taking or damaging of Plaintiff's property without due process of law and denial of equal protection of the laws, all in violation of Plaintiff's constitutional rights under the Fourteenth Amendment of the Constitution of the United States.

15. The value of the leasehold at the time of the taking was approximately $659,000.00, which is just compensation there-

for, consequential damages incurred as a direct result of the taking, causing Garland's to remain and continue to carry on business with the expenditure of attending expenses in the premises located at 410-414 North Sixth Street in City Block 118 from April 1, 1974, to December 31, 1977, during which time the lease was devoid of economic value by the conduct and action of The City, which resulted in moving out establishes businesses from City Blocks 118 and 119 and tearing down the buildings, permitting condemnation blight to set in, and destroying its business character. Two elements of these consequential damages are the amount of rent paid for the period, which is in the sum of $187,304.85, and the amount of taxes paid during this period as additional rent, which is in the amount of $44,-185.09. Plaintiff has further suffered consequential damages as a direct result of the taking during the period in an amount representing the cost of insurance and maintenance for said premises, which is in the sum of $64,822.00. In addition, as a direct result of the action of The City in condemning the premises of Garland's, it has suffered additional consequential injury and damage to its business as a direct result of the taking in the sum of $700,000.00. Additional consequential damages as yet undetermined will result to Plaintiff until its leasehold and the obligations thereunder are terminated by law.

16. There presently is an impossibility of performance of the lease dated November 28, 1952; that performance of said lease has been rendered impossible by the acts of The City in passing Ordinances No. 55952 and No. 56476 and the actions taken in pursuance thereof which have depressed and stripped the area around Plaintiff's premises of its business and commercial character and rendered its once profitable lease valueless.

WHEREFORE, Plaintiff prays for judgment herein against Defendant The City of St. Louis in the sum of $659,000.00 as just compensation for the condemnation and taking of Plaintiff's leasehold interest in and improvements of the property located in City Block 118, known and numbered as 410-414 North Sixth

Street, and for the sum of $296,311.94 for the consequential damages suffered by Plaintiff as a direct result of condemnation of Plaintiff's leasehold interest in said property which accrued during the period of April 1, 1974, to December 31, 1977, and for such amounts as the Court finds due on the evidence adduced from January 1, 1978, to the date of the judgment herein; and for a judgment in the sum of $700,000.00 as and for the consequential damages to Plaintiff's business broken up and interrupted by the taking of Plaintiff's leasehold interest for a public purpose; and for an order of Court adjudging and decreeing herein that the lease dated November 28, 1952, on said property between Plaintiff and Defendant Manley Investment Company is terminated, null and void and no effect as to Plaintiff, and that Plaintiff has no further liabilities thereunder; and further Plaintiff prays for a judgment that all sums herein awarded as just compensation for the taking of the leasehold include interest at the rate of 6% per annum from the date of such taking to the date of the entry of this judgment; and for its costs herein expended, and for such other and further relief as to this Honorable Court may seem meet, just and proper in the premises. Plaintiff requests a trial by jury on any and all issues herein made by this Complaint.

/s/ ALLEN A. YODER
700 Boatmen's Tower
100 North Broadway
St. Louis, Missouri 63102
241-5845
Attorney for Plaintiff

OF COUNSEL:

RASSIEUR, LONG, YAWITZ & SCHNEIDER
700 Boatmen's Tower
100 North Broadway
St. Louis, Missouri 63102
241-5845

EXHIBIT A

Ordinance 55952

(B.B. No. 81)

An ordinance finding that a certain blighted area as defined in Section 29.020 of the Revised Code of the City of St. Louis, Missouri, exists in the City of St. Louis, and that the redevelopment of such area is necessary and in the public interest under Chapter 353 of the Revised Statutes of Missouri, 1959, as amended, and under said ordinance, and is in the interest of the public health, safety, morals, and general welfare of the people of the City of St. Louis and that such area is described as follows:

Parcel No. 1

Beginning at the northwest corner of City Block 825, said corner being the intersection of the east line of Twelfth Boulevard and the south line of Delmar Boulevard; thence eastwardly along the south line of Delmar Boulevard to the northwest corner of City Block 166, said corner being the intersection of the south line of Delmar Boulevard and the east line of Eighth Street; thence southwardly along the east line of Eighth Street to the southwest corner of City Block 166, said corner being the intersection of the east line of Eighth Street and the north line of Lucas Avenue; thence eastwardly along the north line of Lucas Avenue to the southeast corner of City Block 166, said corner being the intersection of the north line of Lucas Avenue and the west line of Seventh Street; thence northwardly along the west line of Seventh Street to the northeast corner of City Block 166, said corner being the intersection of the west line of Seventh Street and the south line of Delmar Boulevard; thence eastwardly along the south line of Delmar Boulevard to the northwest corner of City Block 121, said corner being the intersection of the south line of Delmar Boulevard and the east

line of Sixth Street; thence southwardly along the east line of Sixth Street to the southwest corner of City Block 121, said corner being the intersection of the east line of Sixth Street and the north line of Lucas Avenue; thence eastwardly along the north line of Lucas Avenue to the southeast corner of City Block 121, said corner being the intersection of the west line of Broadway and the north line of Lucas Avenue; thence northwardly along the west line of Broadway to the northeast corner of City Block 121, said corner being the intersection of the west line of Broadway and the south line of Delmar Boulevard; thence eastwardly along the south line of Delmar Boulevard to the northwest corner of City Block 6489, the said corner being the intersection of the east line of Fourth Street and the south line of Delmar Boulevard; thence eastwardly along the south line of Delmar Boulevard and the eastern projection thereof to the center line of the Mark Twain Expressway (Interstate Highway 70); thence southwardly along the center line of said expressway to the eastward projection of the former center line of vacated Lucas Avenue, vacated by Ordinance 50609; thence westwardly along said projection and said former center line of vacated Lucas Avenue to the east line of Fourth Street; thence southwardly along the east line of Fourth Street to its intersection with the eastern projection of the south line of St. Charles Street; thence westwardly along this south line projection and the south line of St. Charles Street to the southward projection of a line in City Block 97, said line being 90 feet 2 inches, more or less, west of and parallel to the west line of Fourth Street; thence northwardly along this line through City Block 97 to the south line of Washington Avenue; thence westwardly along the south line of Washington Avenue to the northwest corner of City Block 97, said corner being the intersection of the south line of Washington Avenue and the east line of Broadway; thence south along the east line of Broadway to the southwest corner of City Block 98, said corner being the intersection of the east line of Broad-

way and the north line of Locust Street; thence eastwardly along the north line of Locust Street and its eastward projection to the east line of Fourth Street; thence southwardly along the east line of Fourth Street to the northwest corner of City Block 86, said corner being the intersection of the east line of Fourth Street and the south line of Pine Street; thence westwardly along the south line of Pine Street to the northwest corner of City Block 101, said corner being the intersection of the south line of Pine Street and the east line of Broadway; thence northwardly along the east line of Broadway projected to the center line of Pine Street; thence westwardly along the center line of Pine Street to the projected east line of Sixth Street; thence northwardly along the projected east line of Sixth Street and the east line of Sixth Street to the southwest corner City Block 117, said corner being the intersection of the east line of Sixth Street and the north line of Olive Street; thence east 128 feet, more or less, to the former west line of a 15 foot wide alley vacated by Ordinance 45553; thence north 114 feet 3 inches, more or less, along the former west alley line to an east-west line 114 feet 3 inches, more or less, north of and parallel to the north line of Olive Street; thence west on this east-west line projected to the west line of Sixth Street; thence southwardly on the west line of Sixth Street to a property line in City Block 129, said property line being the south line of property now or formerly belonging to Lauer-Enloe Limited and is 54 feet 6 inches, more or less, north of the intersection of the west line of Sixth Street and the north line of Pine Street; thence westwardly along this said property line and its westward projection to the west line of a north-south alley in City Block 129; thence northwardly along the west line of said alley to the south line of Olive Street; thence westwardly along the south line of Olive Street to the northwest corner of City Block 129, said corner being the intersection of the south line of Olive Street and the east line of Seventh Street; thence southwardly along the east line of Seventh Street to the north line of

Seventh Street vacated by Ordinance 50495; thence westwardly 12 feet to the new east line of Seventh Street established by Ordinance 50495; thence southwardly along this said east line of 174.89 feet, more or less, to the southwest corner of City Block 129, said corner being the intersection of the east line of Seventh Street and the north line of Pine Street established by Ordinance 50595; thence westwardly along the north line of Pine Street to the west line of an 7 foot 6 inch wide alley in City Block 182; thence northwardly along the said west alley line and its northward projection to the south line of Olive Street; thence westwardly along the south line of Olive Street to the northwest corner of City Block 182; said corner being the intersection of the south line of Olive Street and the east line of Eighth Street; thence southwardly along the east line of Eighth Street to the northwest corner of City Block 183, said corner being the intersection of the east line of Eighth Street and the south line of Pine Street; thence eastwardly along the south line of Pine Street and its eastward projection to the center line of Seventh Street; thence southwardly along the center line of Seventh Street to its intersection with the eastern projection of the north line of Chestnut Street; thence westwardly along the north line of Chestnut Street to its intersection with the west line of a 20 foot wide alley in City Block 502, said alley intersection being 177 feet 7 inches, more or less, west of the intersection of the west line of Eleventh Street and the north line of Chestnut Street; thence northwardly along the said west alley line to its intersection in parcel 14 with the north line of a 15 foot wide alley; thence east along this north alley line to the east line of parcel 14, said parcel line is also the west line of parcel 15; thence northwardly along the parcel line to its intersection with the south line of Pine Street; thence westwardly along the south line of Pine Street to its intersection with the southern projection of the west line of a 20 foot wide alley in City Block 503; thence northwardly along the said alley projection and the west line of the 20 foot wide alley in City Block

503 to its intersection with the north line of a 20 foot wide east-west alley; thence eastwardly along the north line of this east-west alley 97 feet 4 inches, more or less, to a property line, said property line being the west line of property now or formerly belonging to Eleven Twenty Olive Incorporated; thence northwardly 104 feet 1 inch, more or less, to the south line of Olive Street; thence westwardly along the south line of Olive Street to the intersection of the southern projection of the former west line of a 20 foot wide alley in City Block 516 vacated by Ordinance 42075; thence northwardly along this southern projection and former west alley line in City Block 516 to the south line of a 15 foot wide east-west alley; thence eastwardly along the south alley line 158.33 feet, more or less, to the southward projection of a property line, this line being the east line of property now or formerly belonging to the FNR Centennial Corporation and the west line of property now or formerly belonging to the Joseph P. Kelly Estate and Thomas F. Muldoon (Mercantile Trust Company, Trustee); thence northwardly along this southern property line projection and the property line to the south line of Locust Street; thence westwardly along the south line of Locust Street to the northwest corner of City Block 516, said corner being the intersection of the south line of Locust Street and the east line of Twelfth Boulevard; thence northwardly along the east line of Twelfth Boulevard to the southwest corner of City Block 517; said corner being the intersection of the east line of Twelfth Boulevard and the north line of Washington Avenue; thence east 121 feet 4 inches, more or less, to a property line, said property line being the east line of property now or formerly belonging to the St. Louis Union Trust Company and the west line of property now or formerly belonging to the Kay Realty Company; thence northwardly along said property line to the south line of Lucas Avenue; thence westwardly along the south line of Lucas Avenue to the northwest corner of City Block 517, said corner being the intersection of the south line of Lucas Avenue and the east line

of Twelfth Boulevard; thence northwardly along the east line of Twelfth Boulevard to the northwest corner of City Block 825, the point of beginning.

Parcel No. 2

Beginning at the southwest corner of City Block 206-N, said corner being the intersection of the east line of Twelfth Boulevard and the north line of Walnut Street; thence eastwardly on the north line of Walnut Street to the center line of Eleventh Street; thence southwardly along the center line of Eleventh Street to the center line of Spruce Street; thence eastwardly along the center line of Spruce Street to the northern projection at right angles of the west line of the Missouri State Highway right-of-way in City Block 417 and the south line of Spruce Street; thence south and southwest along the said projection and the irregular west line of the Missouri State Highway right-of-way in City Block 417 to the former center line of a 15 foot wide east-west alley vacated by Ordinance 16713, this former center line also being a Missouri State Highway right-of-way line; thence south on this former alley center line to its intersection with the center line of the Daniel Boone Expressway, United States Rte. Forty; thence westwardly along the said Expressway center line to its intersection with the southern projection of the east line of Twelfth Street; thence northwardly along the southern projection of the east line of Twelfth Street and the east line of Twelfth Street to the westward projection of the north line of Spruce Street; thence eastwardly along the said projection of the north line of Spruce Street to the southwest corner of City Block 436, said corner being the intersection of the north line of Spruce Street and the east line of Twelfth Boulevard; thence northwardly along the east line of Twelfth Boulevard to the southwest corner of City Block 206-N, the point of beginning; describing the applicable time period for filing development plans for all or part of the blighted area and containing an emergency clause.

WHEREAS, by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, such area has become an economic and social liability, by reason of which such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes; and

WHEREAS, the clearance, replanning, rehabilitation, or reconstruction of such area, and the provision for such industrial commercial, residential, recreational, or public structures and spaces as may be appropriate, including other facilities incidental or appurtenant thereto, is necessary and in the public interest under Chapter 353 of the Revised Statutes of Missouri, 1959, as amended, and under Chapter 29 of the Revised Code of the City of St. Louis, Missouri, and is necessary in the interest of public health, safety, morals, and general welfare of the people of the City of St. Louis; and

WHEREAS, such conditions are beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by ordinary private enterprise without the aids provided in the "Urban Redevelopment Corporation Law" set forth in Chapter 353, Missouri Revised Statutes, 1959, and Chapter 29 of the Revised Code of the City of St. Louis.

NOW, THEREFORE,

Be it ordained by the City of St. Louis, as follows:

Section One. There exists within the City of St. Louis a certain blighted area as defined by Section 353.020, Revised Statutes of Missouri, 1959, and by Chapter 29 of the Revised Code of the City of St. Louis, Missouri, described as follows:

Parcel No. 1

Beginning at the northwest corner of City Block 825, said corner being the intersection of the east line of Twelfth

Boulevard and the south line of Delmar Boulevard; thence eastwardly along the south line of Delmar Boulevard to the northwest corner of City Block 166, said corner being the intersection of the south line of Delmar Boulevard and the east line of Eighth Street; thence southwardly along the east line of Eighth Street to the southwest corner of City Block 166, said corner being the intersection of the east line of Eighth Street and the north line of Lucas Avenue; thence eastwardly along the north line of Lucas Avenue to the southeast corner of City Block 166, said corner being the intersection of the north line of Lucas Avenue and the west line of Seventh Street; thence northwardly along the west line of Seventh Street to the northeast corner of City Block 166, said corner being the intersection of the west line of Seventh Street and the south line of Delmar Boulevard; thence eastwardly along the south line of Delmar Boulevard to the northwest corner of City Block 121, said corner being the intersection of the south line of Delmar Boulevard and the east line of Sixth Street; thence southwardly along the east line of Sixth Street to the southwest corner of City Block 121, said corner being the intersection of the east line of Sixth Street and the north line of Lucas Avenue; thence eastwardly along the north line of Lucas Avenue to the southeast corner of City Block 121, said corner being the intersection of the west line of Broadway and the north line of Lucas Avenue; thence northwardly along the west line of Broadway to the northeast corner of City Block 121, said corner bing the intersection of the west line of Broadway and the south line of Delmar Boulevard; thence eastwardly along the south line of Delmar Boulevard to the northwest corner of City Block 6489, the said corner being the intersection of the east line of Fourth Street and the south line of Delmar Boulevard; thence eastwardly along the south line of Delmar Boulevard and the eastern projection thereof to the center line of the Mark Twain Expressway (Interstate Highway 70); thence southwardly along the center line of said expressway to the eastward projection of the former center line of vacated Lucas Avenue,

vacated by Ordinance 50609; thence westwardly along said projection and said former center line of vacated Lucas Avenue to the east line of Fourth Street; thence southwardly along the east line of Fourth Street to its intersection with the eastern projection of the south line of St. Charles Street; thence westwardly along this south line projection and the south line of St. Charles Street to the southward projection of a line in City Block 97, said line being 90 feet 2 inches, more or less, west of and parallel to the west line of Fourth Street; thence northwardly along this line through City Block 97 to the south line of Washington Avenue; thence westwardly along the south line of Washington Avenue to the northwest corner of City Block 97, said corner being the intersection of the south line of Washington Avenue and the east line of Broadway; thence south along the east line of Broadway to the southwest corner of City Block 98, said corner being the intersection of the east line of Broadway and the north line of Locust Street; thence eastwardly along the north line of Locust Street and its eastward projection to the east line of Fourth Street; thence southwardly along the east line of Fourth Street to the northwest corner of City Block 86, said corner being the intersection of the east line of Fourth Street and the south line of Pine Street; thence westwardly along the south line of Pine Street to the northwest corner of City Block 101, said corner being the intersection of the south line of Pine Street and the east line of Broadway; hence northwardly along the east line of Broadway projected to the center line of Pine Street; thence westwardly along the center line of Pine Street to the projected east line of Sixth Street; thence northwardly along the projected east line of Sixth Street and the east line of Sixth Street to the southwest corner of City Block 117, said corner being the intersection of the east line of Sixth Street and the north line of Olive Street; thence east 128 feet, more or less, to the former west line of a 15 foot wide alley vacated by Ordinance 45553; thence north 114 feet 3 inches, more or less, along the former west alley line to an east-west line 114 feet 3 inches, more or less,

north of and parallel to the north line of Olive Street; thence west on this east-west line projected to the west line of Sixth Street; thence southwardly on the west line of Sixth Street to a property line in City Block 129, said property line being the south line of property now or formerly belonging to Lauer-Enloe Limited and is 54 feet 6 inches, more or less, north of the intersection of the west line of Sixth Street and the north line of Pine Street; thence westwardly along this said property line and its westward projection to the west line of a north-south alley in City Block 129; thence northwardly along the west line of said alley to the south line of Olive Street; thence westwardly along the south line of Olive Street to the northwest corner of City Block 129, said corner being the intersection of the south line of Olive Street and the east line of Seventh Street; thence southwardly along the east line of Seventh Street to the north line of Seventh Street vacated by Ordinance 50495; thence westwardly 12 feet to the new east line of Seventh Street established by Ordinance 50495; thence southwardly along this said east line of 174.89 feet, more or less, to the southwest corner of City Block 129, said corner being the intersection of the east line of Seventh Street and the north line of Pine Street established by Ordinance 50495; thence westwardly along the north line of Pine Street to the west line of an 7 foot 6 inch wide alley in City Block 182; thence northwardly along the said west alley line and its northward projection to the south line of Olive Street; thence westwardly along the south line of Olive Street to the northwest corner of City Block 182; said corner being the intersection of the south line of Olive Street and the east line of Eighth Street; thence southwardly along the east line of Eighth Street to the northwest corner of City Block 183, said corner being the intersection of the east line of Eighth Street and the south line of Pine Street; thence eastwardly along the south line of Pine Street and its eastward projection to the center line of Seventh Street; thence southwardly along the center line of Seventh Street to its intersection with the eastern projection of the north line of

Chestnut Street; thence westwardly along the north line of Chestnut Street to its intersection with the west line of a 20 foot wide alley in City Block 502, said alley intersection being 177 feet 7 inches, more or less, west of the intersection of the west line of Eleventh Street and the north line of Chestnut Street; thence northwardly along the said west alley line to its intersection in parcel 14 with the north line of a 15 foot wide alley; thence east along this north alley line to the east line of parcel 14, said parcel line is also the west line of parcel 15; thence northwardly along the parcel line to its intersection with the south line of Pine Street; thence westwardly along the south line of Pine Street to its intersection with the southern projection of the west line of a 20 foot wide alley in City Block 503; thence northwardly along the said alley projection and the west line of the 20 foot wide alley in City Block 503 to its intersection with the north line of a 20 foot wide east-west alley; thence eastwardly along the north line of this east-west alley 97 feet 4 inches, more or less, to a property line, said property line being the west line of property now or formerly belonging to Eleven Twenty Olive Incorporated; thence northwardly 104 feet 1 inch, more or less, to the south line of Olive Street; thence westwardly along the south line of Olive Street to the intersection of the southern projection of the former west line of a 20 foot wide alley in City Block 516 vacated by Ordinance 42075; thence northwardly along this southern projection and former west alley line in City Block 516 to the south line of a 15 foot wide east-west alley; thence eastwardly along the said south alley line 158.33 feet, more or less, to the southward projection of a property line, this line being the east line of property now or formerly belonging to the FNR Centennial Corporation and the west line of property now or formerly belonging to the Joseph P. Kelly Estate and Thomas F. Muldoon (Mercantile Trust Company, Trustee); thence northwardly along this southern property line projection and the property line to the south line of Locust Street; thence westwardly along the south line of Locust Street to the northwest corner of City

Block 516, said corner being the intersection of the south line of Locust Street and the east line of Twelfth Boulevard; thence northwardly along the east line of Twelfth Boulevard to the southwest corner of City Block 517; said corner being the intersection of the east line of Twelfth Boulevard and the north line of Washington Avenue; thence east 171 feet 4 inches, more or less, to a property line, said property line being the east line of property now or formerly belonging to the St. Louis Union Trust Company and the west line of property now or formerly belonging to the Kay Realty Company; thence northwardly along said property line to the south line of Lucas Avenue; thence westwardly along the south line of Lucas Avenue to the northwest corner of City Block 517, said corner being the intersection of the south line of Lucas Avenue and the east line of Twelfth Boulevard; thence northwardly along the east line of Twelfth Boulevard to the northwest corner of City Block 825, the point of beginning.

Parcel No. 2

Beginning at the southwest corner of City Block 206-N, said corner being the intersection of the east line of Twefth Boulevard and the north line of Walnut Street; thence eastwardly on the north line of Walnut Street to the center line of Eleventh Street; thence southwardly along the center line of Eleventh Street to the center line of Spruce Street; thence eastwardly along the center line of Spruce Street to the northern projection at right angles of the west line of the Missouri State Highway right-of-way in City Block 417 and the south line of Spruce Street; thence south and southwest along the said projection and the irregular west line of the Missouri State Highway right-of-way in City Block 417 to the former center line of a 15 foot wide east-west alley vacated by Ordinance 16713, this former center line also being a Missouri State Highway right-of-way line; thence south on this former alley center line to its intersection with the center line of the Daniel Boone

Expressway, United States Rte. Forty; thence westwardly along the said Expressway center line to its intersection with the southern projection of the east line of Twelfth Street; thence northwardly along the southern projection of the east line of Twelfth Street and the east line of Twelfth Street to the westward projection of the north line of Spruce Street; thence eastwardly along the said projection of the north line of Spruce Street to the southwest corner of City Block 436, said corner being the intersection of the north line of Spruce Street and the east line of Twelfth Boulevard; thence northwardly along the east line of Twelfth Boulevard to the southwest corner of City Block 206-N, the point of beginning.

Section Two. The redevelopment of such area, as provided by Chapter 353, Revised Statutes of Missouri, 1959, and Chapter 29 of the Revised Code of the City of St. Louis, Missouri, is necessary and in the public interest under said Chapter 353, as amended and under said Chapter 29 of the Revised Code of the City of St. Louis, and is necessary in the interest of the public health, safety, morals and general welfare of the people of the City of St. Louis, and can be accomplished without the expenditure of public funds.

Section Three. In any portion of the blighted area described in Section One which has previously been declared blighted by ordinance the initial period for filing development plans therefor under the provisions of Section 29.070 (1) and any amendments thereto of the Revised Code of the City of St. Louis shall commence to run from the effective date of this ordinance.

Section Four. This ordinance being necessary for the immediate preservation of public health, morals, safety and general welfare shall be and is hereby declared to be an emergency measure within the meaning of Article IV, Section 20, of the Charter of the City of St. Louis, and as such shall take effect immediately upon its approval by the Mayor.

Approved: June 20, 1971.

Ordinance 56476

(B.B. No. 391)

An Ordinance approving the Development plan submitted by the Mercantile Center Redevelopment Corporation; granting a Certificate of Convenience and Necessity to said corporation to exercise the power of eminent domain within the area included in such plan; authorizing the Mayor and Comptroller to enter into a contract on behalf of the City of St. Louis with the Mercantile Center Redevelopment Corporation; setting forth the terms and conditions of said contract; incorporating by reference Chapter 353, R.S.Mo., 1969, as amended and Chapter 29 of the Revised Code of the City of St. Louis 1960; containing a severability clause and containing an emergency clause.

WHEREAS, The Board of Aldermen has by Ordinance Number 55952 approved June 29, 1971, found and designated a certain area of the City of St. Louis to be a blighted area within the meaning of and as defined in the Urban Redevelopment Corporation Law, Section 353.020 of the Revised Statutes of Missouri 1969, and

WHEREAS, the Mercantile Center Redevelopment Corporation did on October 19, 1972 duly submit a proposed plan of redevelopment for a portion of said area to the City Plan Commisison, and a supplemental letter with attachments dated February 9, 1973, which portion consists of City Blocks 118, 119, 126, 127, 164 and 180 and adjacent portions of St. Charles Street to be vacated; and

WHEREAS, there have been no improvements in said portion of said area since said designation to alter or change the blighted character of said portion; and

WHEREAS, thereafter the City Plan Commission duly made an independent study and investigation of said plan in the man-

ner provided by Chapter 25, of the Revised Code of St. Louis, 1960, and thereafter on February 21, 1973, did unanimously adopt a resolution approving the development plan of the Mercantile Center Redevelopment Corporation, its successors and assigns, subject to four conditions therein set out which resolution was duly transmitted to the Mayor, and Board of Aldermen on February 21, 1973; and

WHEREAS, the recommendation of the Mayor concerning the redevelopment of said area recommending approval of the Mercantile Center Redevelopment Corporation Plan was duly transmitted to the Board of Aldermen and duly considered; and

WHEREAS, the application and development plan of the Mercantile Center Redevelopment Corporation for said portion of the blighted area was thereby found to be in full compliance with Chapter 29 of the Revised Code of the City of St. Louis of 1960 and all the procedures and requirements therein provided and approved; and

WHEREAS, it was determined that the development plan of the Mercantile Center Redevelopment Corporation is in the public interest and serves a public purpose;

Now, therefore, be it Ordained by the City of St. Louis, as follows:

Section One. It is hereby determined, found and declared that the development plan of the Mercantile Center Redevelopment Corporation as submitted October 19, 1972 and supplemented on February 9, 1973 as aforesaid and recommended by the City Plan Commission and as thereafter transmitted and recommended by the Mayor to the Board of Aldermen is in the public interest and as such is approved in accordance with the terms of this Ordinance. The project area is identified and described as follows:

City Blocks 118, 119, 126, 127, 164 and 180 together with vacated St. Charles Street lying adjacent to and between City Blocks 118 and 119, vacated St. Charles Street lying adjacent to and between City Blocks 126 and 127 and vacated St. Charles Street lying adjacent to and between City Blocks 164 and 180 but including no portion of Seventh Street (—— feet wide) or Sixth Street (—— feet wide).

For purposes of any volume and open space calculations made for the purpose of any requirement of the City under any other Ordinance the total project area and all construction therein shall be considered in relation to each other.

Section Two. It is determined that no relocation problem exists in the area covered by the development plan because of the very few dwelling accommodations in the development area and because of the availability of similar accommodations in the vicinity of the development area. Upon acquisition of property containing occupied dwelling units, families will be allowed to continue in residence until the property is required to be vacated for demolition. Direct assistance in locating suitable housing accommodations will be given by the developer, Mercantile Center Redevelopment Corporation, to families forced to vacate. No family will be evicted until suitable dwelling accommodations are located elsewhere and are offered to the family. The Mercantile Center Redevelopment Corporation will cooperate with City Departments, particularly the Department of Welfare, in the relocation of displaced families.

Section Three. It is determined, found and declared that there exists a necessity for the granting of the power of eminent domain to the said Mercantile Center Redevelopment Corporation, that the granting of such power of eminent domain to said Mercantile Center Redevelopment Corporation is in the public interest and serves the public purposes expressed in Chapter 29 of the Revised Code of the City of St. Louis of 1960, and that

there is hereby granted to said Mercantile Center Redevelopment Corporation a Certificate of Public Convenience and Necessity authorizing and empowering the said Mercantile Center Redevelopment Corporation to acquire by eminent domain or otherwise all or any part of the real property located in the blighted area for the purposes expressed in the Development Plain. Said Mercantile Center Redevelopment Corporation shall have the authority and powers of eminent domain as set forth in Section 353.130 (3) Revised Statutes of Missouri, 1969. The developer may at its election call upon the City as agent for the developer to acquire all or part of the real property included in said Development Plan on posting the deposit defined in Section 29.200 of the Revised Code of the City of St. Louis, 1960.

Section Four. The Board of Aldermen has reviewed the previous designation of the area described in the Development Plan as a blighted area, and the Board of Aldermen hereby finds that said area (the project area) is a blighted area as defined by Chapter 353 of the Revised Statutes of Missouri, 1969, as amended and Chapter 29 of the Revised Code of the City of St. Louis, 1960.

Section Five. The Mayor and the Comptroller of the City of St. Louis shall be and are hereby authorized and directed to enter into and perform in behalf of said City a contract by and between said City and the developer, the Mercantile Center Redevelopment Corporation, its successors and assigns. In the event of any conflicts or differences between the provisions of the Development Plan and the contract hereinafter recited the contract shall govern and said development plan shall be deemed to be amended accordingly.

Section Six. The said contract is hereby made a part of this Ordinance and said contract shall be substantially in word and figures as follows:

AGREEMENT

AN AGREEMENT entered into this .... day of ....., 1973, between the City of St. Louis, hereinafter referred to as "City," and Mercantile Center Redevelopment Corporation, its successors and assigns, hereinafter referred to as "Developer" for the execution of the Development Plan heretofore submitted by the Developer approved and enacted by the Board of Aldermen of the City of St. Louis by the ordinance of which this Agreement is a part.

WHEREAS, the Board of Aldermen of the City of St. Louis has enacted into law an ordinance, of which this Agreement is a part, approving the Development Plan submitted by the Developer, approved by the City Plan Commission declaring that the clearance, redevelopment, replanning, rehabilitation and reconstruction thereof are necessary for the public convenience and necessity and that the approval of the Development plan, and construction of the redevelopment project are necessary for the preservation of the public peace, health, safety, morals and welfare; and

WHEREAS, the aforesaid Ordinance requires the undertaking and performance upon the part of the Developer and of the City of various duties and steps; and

WHEREAS, said Ordinance directs the Mayor and the Comptroller of the City to enter into a contract with the Developer providing for the execution of said Development Plan, and

WHEREAS, Mercantile Center Redevelopment Corporation is a corporation formed under Chapter 353 of the Revised Statutes of Missouri, 1969, and now in good standing in the State of Missouri.

NOW THEREFORE, the City and the Developer, its successors and assigns for the consideration and mutual covenants hereinafter contained and described under the conditions hereinafter set forth do hereby agree as follows:

1. The provisions of the Urban Redevelopment Corporations Law of the State of Missouri, as amended, up to and including the date of this contract, the provisions of Chapter 29 of the Revised Code of the City of St. Louis of 1960 of which this agreement is a part and the Development Plan, are hereby incorporated by reference and made in whole a part of this Agreement. Wherever the term "Development Plan" is used in this Agreement it shall refer to the Development Plan incorporated by reference in this Ordinance together with amendments and modifications if any thereto.

2. The Developer, its successors or assigns shall erect or cause to be erected at its expense the following facilities:

(a) Four modern high rise office buildings containing a total of approximately 3,285,000 square feet of floor space;

(b) A modern high rise hotel containing approximately 1,000 guest rooms and self contained parking spaces required by City Ordinances to service same;

(c) A parking structure for approximately 200 cars.

The proposed redevelopment is to be constructed as follows in six phases.

Phase I. Within the area comprised by City Blocks 164 and 180 and the vacated portion of St. Charles Street lying adjacent to and between said City Blocks will be constructed a high rise office building of approximately thirty-five (35) stories and containing approximately 760,000 gross square feet of floor space and a parking structure for approximiately 200 cars. Vacation

and demolition of existing structures will commence promptly after the execution of this agreement and construction will start upon completion of demolition.

Phase II. Within the area comprised by City Block 119 and part of City Block 118 and the vacated portion of St. Charles Street lying adjacent to and between said city blocks will be constructed a hotel of approximately twenty-five (25) stories with approximately 800 guest rooms and self contained parking for 200 cars and containing approximately 1,000,000 square feet of gross floor area. This phase will commence between one and three years after the date of this contract.

Phase III. Within the area comprised by City Block 126 and the vacated portion of St. Charles Street adjacent thereto will be constructed a high rise office building of approximately twenty-seven (27) stories with approximately 625,000 square feet of gross floor area. This phase will commence between three and five years after the date of this contract.

Phase IV. Within the area comprised by City Block 127 will be constructed a high rise office building of approximately twenty-four (24) stories with approximately 585,000 square feet of gross floor area. This phase will commence between four and seven years after the date of this contract.

Phase V. Within the area comprised by City Block 127 will be constructed a high rise office building of approximately fifty-one (51) stories and approximately 1,315,000 square feet of gross ffoor area. This phase will commence between six and ten years after the date of this contract.

Phase VI. Within the area comprised by City Block 118 will be constructed a free standing addition to the Phase II hotel having approximately twenty-five (25) stories and containing approximately 200 guest rooms and self contained parking for

approximately 100 cars and containing approximately 150,000 square feet of gross floor area. This stage will commence approximately ten years after the date of this contract.

Additional retail structures containing approximately 14,000 additional gross floor area will be constructed in conjunction with Phases III, IV and V. Enclosed pedestrian bridge overpasses will be constructed in connection with Phases III and IV.

Prior to beginning construction of any structure, Developer shall submit to the City Plan Commission final design plans for the approval of the City Plan Commission, which approval shall not be unreasonably withheld. A written report respecting the approval shall be given by the City Plan Commission to Developer within sixty days after the receipt of such plan. If no report is made by the City Plan Commission within sixty days after receipt of such plans the same shall be deemed to be approved by the City Plan Commission.

3. Developer, its successors or assigns shall have the right to alter, change or modify the plan to the extent of twenty-five percent (25%) of the approximate gross floor area with corresponding changes of proposed building heights and shall further have the right to alter, change or modify the interior of the aforesaid buildings, to alter, combine or otherwise modify office or other units or divisions within the aforesaid buildings; and shall also have the right to use the ground and terrace level floors of said buildings to provide accessory uses as permitted by, and in accordance with the provisions of the Zoning Ordinance of the City of St. Louis to the extent deemed necessary or advisable from time to time. Developer shall have the right prior to completion of construction of any buildings, to set up model offices, stores or exhibits, and to rend portions of said buildings prior to completion when such portions are completed.

4. The proposed development shall be such that the Developer will demolish all the structures above grade on real property

acquired by the developer and will begin construction work on the first building not later than six months after the entering into this contract between the City and the Developer and the acquisition of the project area shall be completed in time for Developer to so commence construction. Construction work on successive phases shall commence within the time limits stated above and construction of each phase shall be substantially completed within a period of three years following commencement of construction on that phase. Such periods shall be extended for delays beyond Developer's control and Developer is not to be responsible for any delays caused by competent legal authority, strikes, lock-outs, labor disputes, riots, fires, or other casualties, tornadoes, cyclones, floods, acts of God, war invasion or acts of a public enemy, accident, governmental restrictions or priorities regarding acquisition or use of material or other inability on the part of the Developer to obtain material or to perform not growing out of its own fault, or for delays caused by the City, State or Federal government. Provided, further, that upon the application by the Developer to the Board of Estimate and Apportionment, said Board may extend the foregoing time limit or any phase or stage to time certain upon finding that:

(a) Developer has exercised all reasonable care to insure completion of the phase in question.

(b) The delay in commencing construction or completion of construction was not caused by an unreasonable act or failure to act on the part of the Developer.

In the event of substantial non-compliance with the Development Plan as approved herein, written notice of which noncompliance is given to the Developer and not corrected within forty-five (45) days after the time reasonably required to complete such correction, unless the time for such correction is further extended by the President of the Board of Public Service, or upon failure of the Developer to commence construction or complete the same within the scheduled time limits set out above

and upon a finding by the President of the Board of Public Service that such failure is due to the fault of the Developer, the President of the Board of Public Service may declare the Developer in default. Following such declaration the Developer shall promptly suspend all work, and Developer's rights to continue operations under this contract shall be suspended. Such declaration then shall promptly be reviewed by the Board of Estimate and Apportionment which shall have thereafter the power to cancel and void this contract or to remove such suspension. Developer shall have the right to appeal such adverse decision to the Courts.

5. Developer, its successors or assigns, shall maintain the buildings in the development area in as good a state of repair and attractiveness as possible.

6. Developer, its successors or assigns, shall have complete and exclusive control over the construction of the project. Developer, its successors or assigns, shall have the exclusive control over the management of the project, the fixing of rentals and the selection or rejection of tenants or occupants of the buildings and property, but will at all times make all facilities in the project available to the general public without regard to race, religion, color, or national origin subject to the provisions of this or other Ordinances existing at the time of this Agreement. The Developer, on behalf of itself, its successors and assigns admit the language, the intent and purpose regarding fair employment practices contained in the provisions of Chapter 102 of the Revised Code of the City of St. Louis, 1960, applying to the Development Plan, agree to be bound hereby and agree to comply with the terms and spirit of said Ordinance.

7. The Developer shall obtain all necessary permits as prescribed by law and be subject to all lawful inspections and perform such other necessary acts as required by Chapter 29 of the Revised Code of the City of St. Louis of 1960, or by the Ordinance of which this contract is a part.

8. The Developer shall in accordance with Section 29.260 of the Revised Code of the City of St. Louis cooperate with and permit access to the agents and representatives of the President of the Board of Public Service or other officials of the City of St. Louis which by law have jurisdiction over construction of public facilities and shall be furnished copies of all written reports made by such representatives or agents.

9. The City agrees to cooperate with Developer and with due diligence to join with the Developer in procuring all changes, improvements and additions in municipal services consistent with the Development Plan in the area deemed necessary by the City and the Developer, including but not limited to the following:

(a) Vacation of all the public alleys in the project area.

(b) Vacation of portions of St. Charles Street as stated above.

(c) To take all other necessary and proper steps to insure that adequate municipal services consistent with the development of the area will be rendered to the area.

10. Upon compliance with the terms and conditions of Section 29.310 and Section 29.320 of the Revised Code of the City of St. Louis of 1960:

(a) Real property within the project area as hereinabove set forth in this Ordinance and acquired by the Developer shall not be subject to assessment or payment of general ad valorem property taxes imposed by the City or State or any political subdivision thereof for a period of ten (10) years after the date upon which Developer becomes the owner of the real property by grant, lease, purchase, condemnation or otherwise except to such extent and in such amount as may be imposed upon such real property during such period measured solely by the amount of the assessed valuation of the land exclusive of improvements, as was determined by the Assessor of the City of St. Louis for taxes

due and payable thereon during the calendar year preceding the calendar year in which the corporation acquired such real property; and the amounts of such tax assessments shall not be increased during said ten (10) year period so long as the real property is owned by the Developer, its successors or assigns and is used in accordance with the Development Plan and this Agreement.

(b) In the event that any such real property was tax exempt immediately prior to its acquisition by the Developer, its successors and assigns, the Assessor of the City of St. Louis shall upon acquisition by the Developer promptly assess such land, exclusive of improvements, at such valuation as shall conform to but not exceed the assessed valuation made during the preceding calendar year of other land, exclusive of improvements, adjacent thereto or in the same general vicinity. The amount of such assessed valuation so fixed by the City Assessor shall not be increased by the City Assessor during the ten (10) year period next following the date upon which the Developer acquired such property so long as such real property is owned by the Developer its successors or assigns and is used in accordance with the Development Plan and this Agreement.

(c) For the next ensuing period of fifteen (15) years, ad valorem taxes upon such real property shall be measured by the assessed valuation thereof as determined by the City Assessor upon the basis of not to exceed fifty per cent (50%) of the true value of such real property including any improvement thereon (i.e. fifty per cent (50%) of the assessed valuation of like property of equal value), nor shall such valuation be increased over fifty per cent (50%) of the true value of such real property from year to year during said period of fifteen (15) years so long as said property is owned by the Developer, its successors or assigns and is used in accordance with the Development Plan.

(d) In the event of the sale or other disposition of any real property of the Developer, its successors or assigns, by reason

of the foreclosure of any mortgage or other lien through insolvency or bankruptcy proceedings, or by order of any Court of competent jurisdiction, or by voluntary transfer or conveyance, the partial tax relief provided for in subsections (a), (b) and (c) of this paragraph shall inure to the benefit of any purchaser or purchasers of such real property so long as such purchaser or purchasers shall continue to use, operate and maintain such real property in accordance with the provisions of the Development Plan.

11. Notwithstanding the tax abatement provisions of 353.110 Revised Statutes of Missouri, 1969, as hereinabove provided, the Developer agrees that with respect to property within the project area defined herein owned by Developer or its successors or assigns, and taxed pursuant hereto and Section 353.110 Revised Statutes of Missouri, 1969, it and its successors or assigns will pay to the City with respect to each such property in addition to the ad valorem taxes computed hereunder, an amount annually equal to the amount by which the actual tax on such property computed pursuant hereto is less than the tax which would have resulted in such taxable year against such property had the assessed value of such property (land and improvements) remained the same as the assessed valuation of such property (land and improvements) at January 1 of the calendar year in which the Ordinance of which this contract is a part becomes law.

The City agrees that with respect to such payments made pursuant to this paragraph, that it will distribute such payments in the same manner as it distributes ad valorem property taxes collected on property (land and improvements) to the State, the City and other political subdivisions entitled thereto at the time of distribution.

12. (a) The net earnings of the Developer during the period in which tax relief is enjoyed under paragraph 10 shall be limited

to an amount not to exceed eight per cent (8%) per annum of the cost to the corporation of the project, including the cost of the land or the balances of such cost as reduced by amortization payments; provided, that the net earnings derived from the project shall in no event exceed a sum equal to eight per cent (8%) per annum upon the entire cost thereof. Such net earnings shall be computed after deducting from gross earnings the following:

(1) All costs and expenses of maintenance and operation.

(2) Amounts paid for taxes, assessments, insurance premiums and other similar charges.

(3) An annual amount sufficient to amortize the cost of the entire project at the end of the period, which shall not be more than sixty (60) years from date of completion of the project.

(b) Surplus earnings of the Developer in excess of those provided for in subparagraph (a) of this paragraph 12 may be used or held for any one or all of the following purposes:

(1) As a reserve for maintenance of such rate of return in the future and may be held by the corporation to offset any deficiency in such rate of return which may have occurred in prior years.

(2) To accelerate the amortization payments.

(3) For the enlargement of the project.

(4) For the reduction in rentals.

At the termination of the tax relief provided in paragraph 10, the Developer shall make a strict accounting of surplus earnings in excess of those permitted hereby and shall turn over to the City any excess of such surplus earnings not previously used for one or more of the purposes set forth in subparagraph (b), (1), (2), (3) and (4) of this paragraph 12.

13. The Developer shall establish and maintain depreciation, obsolescence and other reserves, also surplus and other accounts,

including a reserve for the payment of taxes according to recognized standard accounting practices.

14. "Cost" as used herein shall include among other expenses the cost of land improvements, interest during construction, the estimated or actual expense of demolition of existing structures, the estimated or actual expense of utilities, landscaping, the actual expense of construction equipment and furnishing of buildings and improvements, including architectural, engineering and builder's fees, reasonable management and operational expenses until the project is ready for its proposed use, as provided for in the approved Development Plan, together with such additional expenses incurred as a result of additions to or changes in the Development Plan where such additions or changes are approved by ordinance.

15. The terms, conditions and provisions of this contract and of the Development Plan can be neither substantially modified nor limited except by mutual agreement between the City and the Developer, its successors and assigns; provided, however, that this contract shall not be construed as an enlargement of the authority conferred upon the City by Chapter 353 and other Revised Statutes of Missouri of 1969.

16. Liquidated damages in the amount of five hundred dollars ($500.00) for each month of delay may be assessed in favor of the City upon the failure of the Developer to complete the development project within the time agreed by this contract, except as said time may be extended by the Board of Estimate and Apportionment for good cause. Periods of less than a month shall be assessed upon a proportionate basis as the number of days delay relates to the total number of days in that month. Liquidated damages shall not exceed the reasonable value of any damages suffered by the City and shall be reviewable in the event of dispute between the City and the Developer by appeal to the Courts.

17. Performance or contractors bonds for each the demolition and construction involved in each phase in favor of the City shall be filed by the Developer, its successor or assign with the comptroller at the time demolition and/or construction or each phase commences and in no event shall said bond be filed later than the time that the contractor is required to commence construction of a phase as set forth in paragraph 4 of this contract. The amount of each bond shall be determined by the Board of Estimate and Apportionment when an accurate estimate of the cost as defined in Chapter 29, the Revised Code of the City of St. Louis of 1960 is ascertained through engineering studies and shall be in an amount equal to 10 per cent (10%) of such cost. Developer, its successors or assigns, may request in writing, the President of the Board of Public Service to issue a certificate of completion of any phase of any part thereof upon which a bond has been issued and upon substantial completion of the phase in accordance with the approved development plan, then the President shall issue such certificate and shall promptly notify the Comptroller of same and the Comptroller shall then forthwith discharge the surety on the performance bond. However, in the event the President of the Board of Public Service determines that the project has not been completed in accordance with the approved development plan, then the President forthwith shall transmit notice by registered mail, return receipt requested, to the Developer, stating in writing the reasons for the finding that there has not been substantial compliance. Failure to so notify the Developer within thirty (30) days after receipt of the said written request shall be deemed a certification of completion and upon presentation of proof of said written request to the Comptroller, the Comptroller shall forthwith discharge the surety on the performance bond.

18. The use of the project area shall be limited to the use described in the Development Plan, as modified for a period of

not less than twenty-five (25) years from the effective date of land acquisition.

19. This contract shall remain in full force and effect so long as Developer, its successors or assigns, shall enjoy tax relief under Chapter 29 of the Revised Code of the City of St. Louis of 1960, and at the termination of such relief this contract shall terminate and become null and void, provided that the project as herein described has been completed and so certified by the President of the Board of Public Service.

20. The rights and privileges given to the Developer, its successors or assigns by this contract and the duties imposed on the Developer by this shall apply only to the development project herein described.

21. In the event that the Developer, its successors or assigns shall be prohibited from performing the covenants and agreements herein contained, or contained in the Development Plan by the order of any Court of competent jurisdiction or in the event that the Urban Redevelopment Corporations Law of the State of Missouri and Chapter 29 of the Revised Code of the City of St. Louis of 1960, or the Ordinance of which this contract is a part, shall be declared invalid in whole or in part, or shall be amended in whole or in part then, and in any such event the Developer, its successors or assigns may cancel or terminate this contract by giving written notice of its intention to do so to the City within sixty days (60) thereafter.

22. The obligation or liability of the Developer, its successors or assigns under this contract shall be contingent upon the availability to the Developer, its successors or assigns of first mortgage financing for the project at lawful interest rates.

23. All rents, profits or other revenues received from the real property included in the development area shall belong to

the Developer, its successors or assigns from the time any of said real property is acquired either directly by the Developer or by the City as agent for the Developer.

IN WITNESS WHEREOF the parties have set their hands and seals the day and year first above written.

(Seal)

.....

City Register

Approved as to form:

.....

City Counselor

Attest:

.....

By.....

City of St. Louis, Missouri

Mayor

By.....

Comptroller

Mercantile Center Redevelopment Corporation

By.....

Approved: April 5, 1973.

EXHIBIT NO. B-2

Ordinance 56476

(Com. Sub. Board Bill No. 391)

An Ordinance approving the Development plan submitted by the Mercantile Center Redevelopment Corporation; granting a Certificate of Convenience and Necessity to said corporation to exercise the power of eminent domain within the area included in such plan; authorizing the Mayor and Comptroller to enter into a contract on behalf of the City of St. Louis with the Mercantile Center Redevelopment Corporation; setting forth the terms and conditions of said contract; incorporating by reference Chapter 353, R.S.Mo., 1969, as amended and Chapter 29 of the Revised Code of the City of St. Louis 1960; containing a severability clause and containing an emergency clause.

WHEREAS, The Board of Aldermen has by Ordinance Number 55952 approved June 29, 1971, found and designated a certain area of the City of St. Louis to be a blighted area within the meaning of and as defined in the Urban Redevelopment Corporation Law, Section 353.020 of the Revised Statutes of Missouri 1969, and

WHEREAS, the Mercantile Center Redevelopment Corporation did on October 19, 1972 duly submit a proposed plan of redevelopment for a portion of said area to the City Plan Commission, and a supplemental letter with attachments dated February 9, 1973, which portion consists of City Blocks 118, 119, 126, 127, 164 and 180 and adjacent portions of St. Charles Street to be vacated; and

WHEREAS, there have been no improvements in said portion of said area since said designation to alter or change the blighted character of said portion; and

WHEREAS, thereafter the City Plan Commission duly made an independent study and investigation of said plan in the manner provided by Chapter 29 of the Revised Code of St. Louis 1960 and thereafter on February 21, 1973, did unanimously adopt a resolution approving the development plan of the Mercantile Center Redevelopment Corporation, its successors and assigns, subject to four conditions therein set out, which resolution was duly transmitted to the Mayor and the Board of Aldermen on February 21, 1973; and

WHEREAS, the recommendation of the Mayor concerning the redevelopment of said area recommending approval of the Mercantile Center Redevelopment Corporation Plan was duly transmitted to the Board of Aldermen and duly considered; and

WHEREAS, the application and development plan of the Mercantile Center Redevelopment Corporation for said portion of the blighted area was thereby found to be in full compliance with Chapter 29 of the Revised Code of the City of St. Louis of 1960 and all the procedures and requirements therein provided and approved; and

WHEREAS, it was determined that the development plan of the Mercantile Center Redevelopment Corporation is in the public interest and serves a public purpose;

Now, therefore, be it ordained by the City of St. Louis, as follows:

Section One. It is hereby determined, found and declared that the development plan of the Mercantile Center Redevelopment Corporation as submitted October 19, 1972 and supplemented on February 9, 1973 as aforesaid and recommended by the City Plan Commission and as thereafter transmitted and recommended by the Mayor to the Board of Aldermen is in the public interest and as such is approved in accordance with

the terms of the ordinance. The project area is identified and described as follows:

City Blocks 118, 119, 126, 127, 164 and 180 together with vacated St. Charles Street lying adjacent to and between City Blocks 118 and 119, vacated St. Charles Street lying adjacent to and between City Blocks 126 and 127 and vacated St. Charles Street lying adjacent to and between City Blocks 164 and 180, but including no portion of Seventh Street (..... feet wide) or Sixth Street (..... feet wide).

For purposes of any volume and open space calculations made for the purpose of any requirement of the City under any other ordinance the total project area and all construction therein shall be considered in relation to each other.

Section Two. It is determined that no relocation problem exists in the area covered by the development plan because of the very few dwelling accommodations in the development area and because of the availability of similar accommodations in the vicinity of the development area. Upon acquisition of property containing occupied dwelling units, families will be allowed to continue in residence until the property is required to be vacated for demolition. Direct assistance in locating suitable housing accommodations will be given by the developer, Mercantile Center Redevelopment Corporation, to families forced to vacate. No family will be evicted until suitable dwelling accommodations are located elsewhere and are offered to the family. The Mercantile Center Redevelopment Corporation will cooperate with City Departments, particularly the Department of Welfare, in the relocation of displaced families.

Section Three. It is determined, found and declared that there exists a necessity for the granting of the power of eminent domain to the said Mercantile Center Redevelopment Corporation, that the granting of such power of eminent domain

to said Mercantile Center Redevelopment Corporation is in the public interest and serves the public purposes expressed in Chapter 29 of the Revised Code of the City of St. Louis of 1960, and that there is hereby granted to said Mercantile Center Redevelopment Corporation a Certificate of Public Convenience and Necessity authorizing and empowering the said Mercantile Center Redevelopment Corporation to acquire by eminent domain or otherwise all or any part of the real property located in the blighted area for the purposes expressed in the Development Plan. Said Mercantile Center Redevelopment Corporation shall have the authority and powers of eminent domain as set forth in Sections 353.130(3) Revised Statutes of Missouri, 1969. The developer may at its election call upon the City as agent for the developer to acquire all or part of the real property included in said Development Plan on posting the deposit defined in Section 29.200 of the Revised Code of the City of St. Louis, 1960.

Section Four. The Board of Aldermen has reviewed the previous designation of the area described in the Development Plan as a blighted area, and the Board of Aldermen hereby finds that said area (the project area) is a blighted area, and the Board of Aldermen hereby finds that said area (the project area) is a blighted area as defined by Chapter 353 of the Revised Statutes of Missouri, 1969, as amended, and Chapter 29 of the Revised Code of the City of St. Louis, 1960.

Section Five. The Mayor and the Comptroller of the City of St. Louis shall be and are hereby authorized and directed to enter into and perform in behalf of said City a contract by and between the City and the developer, the Mercantile Center Redevelopment Corporation, its successors and assigns. In the event of any conflicts or differences between the provisions of the Development Plan and the contract hereinafter recited the contract shall govern and said development plant shall be deemed to be amended accordingly.

Section Six. The said contract is hereby made a part of this ordinance and said contract shall be substantially in word and figures as follows:

AGREEMENT

AN AGREEMENT entered into this ... day of ....., 1973, between the City of St. Louis, hereinafter referred to as "City," and Mercantile Center Redevelopment Corporation, its successors and assigns, hereinafter referred to as "Developer" for the execution of the Development Plan heretofore submitted by the Developer, approved and enacted by the Board of Aldermen of the City of St. Louis by the ordinance of which this Agreement is a part.

WHEREAS, the Board of Aldermen of the City of St. Louis has enacted into law an ordinance, of which this Agreement is a part, approving the Development Plan submitted by the Developer, approved by the City Plan Commission declaring that the clearance, redevelopment, replanning, rehabilitation and reconstruction thereof are necessary for the public convenience and necessity and that the approval of the Development Plan, and construction of the redevelopment project are necessary for the preservation of the public peace, health, safety, morals and welfare; and

WHEREAS, the aforesaid ordinance requires the undertaking and performance upon the part of the Developer and of the City of various duties and steps; and

WHEREAS, said ordinance directs the Mayor and the Comptroller of the City to enter into a contract with the Developer providing for the execution of said Development Plan; and

WHEREAS, Mercantile Center Redevelopment Corporation is a corporation formed under Chapter 353 of the Revised

Statutes of Missouri, 1969, and now in good standing in the State of Missouri.

NOW THEREFORE, the City and the Developer, its successors and assigns for the consideration and mutual covenants hereinafter contained and described under the conditions hereinafter set forth do hereby agree as follows:

1. The provisions of the Urban Redevelopment Corporations Law of the State of Missouri, as amended, up to and including the date of this contract, the provisions of Chapter 29 of the Revised Code of the City of St. Louis of 1960 of which this agreement is a part and the Development Plan, are hereby incorporated by reference and made in whole a part of this Agreement. Whenever the term "Development Plan" is used in this Agreement it shall refer to the Development Plan incorporated by reference in this ordinance together with amendments and modifications if any thereto.

2. The Developer, its successors or assigns shall erect or cause to be erected at its expense the following facilities;

(a) Four modern high rise office buildings containing a total of approximately 3,285,000 square feet of floor space;

(b) A modern high rise hotel containing approximately 1,000 guest rooms and self contained parking spaces required by City ordinances to service same;

(c) A parking structure for approximately 200 cars.

The proposed redevelopment is to be constructed as follows in six phases.

Phase I. Within the area comprised of City Blocks 164 and 180 and the vacated portion of St. Charles Street lying adjacent to and between said City blocks will be constructed a high rise office building of approximately thirty-five (35) stories and con-

taining approximately 760,000 gross square feet of floor space and a parking structure for approximately 200 cars. Vacation and demolition of existing structures will commence promptly after the execution of this agreement and construction will start upon completion of demolition.

Phase II. Within the area comprised by City Block 119 and part of City Block 118 and the vacated portion of St. Charles Street lying adjacent to and between said city blocks will be constructed a hotel of approximately twenty-five (25) stories with approximately 800 guest rooms and self contained parking for 200 cars and containing approximately 1,000,000 square feet of gross floor area. This phase will commence not later than three years after the date of this contract.

Phase III. Within the area comprised by City Block 126 and the vacated portion of St. Charles Street adjacent thereto will be constructed a high rise office building of approximately twenty-seven (27) stories with approximately 625,000 square feet of gross floor area. This phase will commence not later than five years after the date of this contract.

Phase IV. Within the area comprised by City Block 127 will be constructed a high rise office building of approximately twenty-four (24) stories with approximately 585,000 square feet of gross floor space. This phase will commence not later than seven years after the date of this contract.

Phase V. Within the area comprised by City Block 127 will be constructed a high rise office building of approximately fifty-one (51) stories and approximately 1,315,000 square feet of gross floor area. This phase will commence not later than ten years after the date of this contract.

Phase VI. Within the area comprised by City Block 118 will be constructed a free standing addition to the Phase II hotel hav-

ing approximately twenty-five (25) stories and containing approximately 200 guest rooms and self contained parking for approximately 100 cars and containing approximately 150,000 square feet of gross floor area. This stage will commence approximately ten years after the date of this contract.

Additional retail structures containing approximately 14,000 additional gross floor area will be constructed in conjunction with Phase III, IV and V. Enclosed pedestrian bridge overpasses will be constructed in connection with Phases III and IV. For purposes of compliance with the timing provisions for the respective phases the order of phases may be varied and interchanged and the commencement of any phase within the time limit for any other phase as stated above shall be deemed compliance with the timing hereby established.

Prior to beginning construction of any structure, Developer shall submit to the City Plan Commission final design plans including signing, landscaping, street furniture and exterior building materials for the approval of the City Plan Commission, which approval shall not be unreasonably withheld. A written report respecting the approval shall be given by the City Plan Commission to Developer within sixty days after the receipt of such plan. If no report is made by the City Plan Commission within sixty days after receipt of such plans the same shall be deemed to be approved by the City Plan Commission.

3. Developer, its successors or assigns shall have the right to alter, change or modify the plan to the extent of twenty-five percent (25%) of the approximate gross floor area with corresponding changes of proposed building heights and shall further have the right to alter, change or modify the interior of the aforesaid buildings, to alter, combine or otherwise modify office or other units or divisions within the aforesaid buildings; and shall also have the right to use the ground and terrace level floors of said

buildings to provide accessory uses as permitted by, and in accordance with the provisions of the Zoning Ordinance of the City of St. Louis to the extent deemed necessary or advisable from time to time. Developer shall have the right prior to completion of construction of any buildings, to set up model offices, stores or exhibits, and to rent portions of said buildings prior to completion when such portions are completed.

4. The proposed development shall be such that the Developer will demolish all the structures above grade on real property acquired by the developer and will begin construction work on the first building not later than six months after the entering into this contract between the City and the Developer and the acquisition of the project area shall be completed in time for Developer to so commence construction. Construction work on successive phases shall commence within the time limits stated above and construction of each phase shall be substantially completed within a period of three years following commencement of construction on that phase. Such periods shall be extended for delays beyond Developer's control and Developer is not to be responsible for any delays caused by competent legal authority, strikes, lock-outs, labor disputes, riots, fires, or other casualties, tornadoes, cyclones, floods, acts of God, war, invasion or acts of a public enemy, accident, governmental restrictions or priorities regarding acquisition or use of material or other inability on the part of the Developer to obtain material or to perform not growing out of its own fault, or for delays caused by the City, State or Federal government. Provided, further, that upon the application by the Developer to the Board of Estimate and Apportionment, said Board may extend the foregoing time limit or any phase or stage to a time certain upon finding that:

(a) Developer has exercised all reasonable care to insure completion of the phase in question.

(b) The delay in commencing construction or completion of construction was not caused by an unreasonable act or failure to act on the part of the Developer.

In the event of substantial non compliance with the Development Plan as approved herein, written notice of which noncompliance is given to the Developer and not corrected within forty-five (45) days after the time reasonably required to complete such correction, unless the time for such correction is further extended by the President of the Board of Public Service, or upon failure of the Developer to commence construction or complete the same within the scheduled time limits set out above and upon a finding by the President of the Board of Public Service that such failure is due to the fault of the Developer, the President of the Board of Public Service may declare the Developer in default. Following such declaration the Developer shall promptly suspend all work, and Developer's rights to continue operation under this contract shall be suspended. Such declaration then shall promptly be reviewed by the Board of Estimate and Apportionment which shall have thereafter the power to cancel and void this contract or to remove such suspension. Developer shall have the right to appeal such adverse decision to the Courts.

5. Developer, its successors or assigns, shall maintain the buildings in the development area in as good a state of repair and attractiveness as possible.

6. Developer, its successors or assigns, shall have complete and exclusive control over the construction of the project. Developer, its successors or assigns, shall have the exclusive control over the management of the project, the fixing of rentals and the selection or rejection of tenants or occupants of the buildings and property, but will at all times make all facilities in the project available to the general public without regard to race, religion, color, or national origin subject to the provisions of this or other

ordinances existing at the time of this Agreement. The Developer, on behalf of itself, its successors and assigns admit the language, the intent and purpose regarding fair employment practices contained in the provisions of Chapter 102 of the Revised Code of the City of St. Louis, 1960, applying the Development Plan, agree to be bound hereby and agree to comply with the terms and spirit of said ordinance. Developer, its successors and assigns, shall furthermore attempt to provide to the extent practicable (1) facilities for service vehicles to enable access to off-street loading and unloading areas without the need for backing on public right of way (2) a below grade service ramp adjacent to the last curb line of Sixth Street (3) development along Eighth Street which can accomodate the eventual closing of Eighth Street by the City and (4) any necessary modifications of public utilities and public utility easements.

7. The Developer shall obtain all necessary permits as prescribed by law and be subject to all lawful inspections and perform such other necessary acts as required by Chapter 29 of the Revised Code of the City of St. Louis of 1960, or by the ordinance of which this contract is a part.

8. The Developer shall in accordance with Section 29.260 of the Revised Code of the City of St. Louis cooperate with and permit access to the agents and representatives of the President of the Board of Public Service or other officials of the City of St. Louis which by law have jurisdiction over construction or public facilities and shall be furnished copies of all written reports made by such representatives or agents.

9. The City agrees to cooperate with Developer and with due diligence to join with the Developer in procuring all changes, improvements and additions in municipal services and requirements consistent with the Development Plan in the area deemed necessary by the City and the Developer, including but not limited to the following:

(a) Vacation of all the public alleys in the project area.

(b) Vacation of portions of St. Charles Street as stated above.

(c) Vacation or encroachment upon any public easement or sidewalk necessary to the construction and use of vehicle ramps or accessways.

(d) To take all other necessary and proper steps to insure that adequate municipal services consistent with the development of the area will be rendered to the area.

10. Upon compliance with the terms and conditions of Section 29.310 and Section 29.320 of the Revised Code of the City of St. Louis of 1960:

(a) Real property within the project area as hereinabove set forth in this ordinance and acquired by the Developer shall not be subject to assessment or payment of general ad valorem property taxes imposed by the City or State or any political subdivision thereof for a period of ten (10) years after the date upon which Developer becomes the owner of the real property by grant, lease, purchase, condemnation or otherwise except to such extent and in such amount as may be imposed upon such real property during such period measured solely by the amount of the assessed valuation of the land exclusive of improvements, as was determined by the Assessor of the City of St. Louis for taxes due and payable thereon during the calendar year preceding the calendar year in which the corporation acquired such real property; and the amounts of such tax assessments shall not be increased during said ten (10) year period so long as the real property is owned by the Developer, its successors or assigns and is used in accordance with the Development Plan and this Agreement.

(b) In the event that any such real property was tax exempt immediately prior to its acquisition by the Developer, its successors and assigns, the Assessor of the City of St. Louis shall upon acquisition by the Developer promptly assess such land,

exclusive of improvements, at such valuation as shall conform to but not exceed the assessed valuation made during the preceding calendar year of other land, exclusive of improvements, adjacent thereto or in the same general vicinity. The amount of such assessed valuation so fixed by the City Assessor shall not be increased by the City Assessor during the ten (10) year period next following the date upon which the Developer acquired such property so long as such real property is owned by the Developer its successors or assigns and is used in accordance with the Development Plan and this Agreement.

(c) For the next ensuing period of fifteen (15) years, ad valorem taxes upon such real property shall be measured by the assessed valuation thereof as determined by the City Assessor upon the basis of not to exceed fifty per cent (50%) of the true value of such real property including any improvements thereon (i.e. fifty per cent (50%) of the assessed valuation of like property of equal value), nor shall such valuation be increased over fifty per cent (50%) of the true value of such real property from year to year during said period of fifteen (15) years so long as said property is owned by the Developer, its successors or assigns and is used in accordance with the Development Plan.

(d) In the event of the sale or other disposition of any real property of the Developer, its successors or assigns, by reason of the foreclosure of any mortgage or other lien through insolvency or bankruptcy proceedings, or by order of any Court of competent jurisdiction, or by voluntary transfer or conveyance, the partial tax relief provided for in subsections (a), (b) and (c) of this paragraph shall inure to the benefit of any purchaser or purchasers of such real property so long as such purchaser or purchasers shall continue to use, operate and maintain such real property in accordance with the provisions of the Development Plan.

11. Notwithstanding the tax abatement provisions of 353.110 Revised Statutes of Missouri, 1969, as hereinabove provided, the

Developer agrees that with respect to property within the project area defined herein owned by Developer or its successors or assigns, and taxed pursuant hereto and Section 353.110 Revised Statutes of Missouri, 1969, it and its successors or assigns will pay to the City with respect to each such property in addition to the ad valorem taxes computed hereunder, an amount annually equal to the amount by which the actual tax on such property computed pursuant hereto is less than the tax which would have resulted in such taxable year against such property had the assessed value of such property (land and improvements) remained the same as the assessed valuation of such property (land and improvements) at January 1 of the calendar year in which the ordinance of which this contract is a part becomes law.

The City agrees that with respect to such payments made pursuant to this paragraph, that it will distribute such payments in the same manner as it distributes ad valorem property taxes collected on property (land and improvements) to the State, the City and other political subdivisions entitled thereto at the time of distribution.

12. (a) The net earnings of the Developer during the period in which tax relief is enjoyed under paragraph 10 shall be limited to an amount not to exceed eight per cent (8%) per annum of the cost to the corporation of the project, including the cost of the land or the balances of such cost as reduced by amortization payments; provided, that the net earnings derived from the project shall in no event exceed a sum equal to eight per cent (8%) per annum upon the entire cost thereof. Such net earnings shall be computed after deducting from gross earnings the following:

(1) All costs and expenses of maintenance and operation.

(2) Amounts paid for taxes, assessments, insurance premiums and other similar charges.

(3) An annual amount sufficient to amortize the cost of the entire project at the end of the period, which shall not be more than sixty (60) years from date of completion of the project.

(b) Surplus earnings of the Developer in excess of those provided for in subparagraph (a) of this paragraph 12 may be used or held for any one or all of the following purposes:

(1) As a reserve for maintenance of such rate of return in the future and may be held by the corporation to offset any deficiency in such rate of return which may have occurred in prior years.

(2) To accelerate the amoritization payments.

(3) For the enlargement of the project.

(4) For the reduction in rentals.

At the termination of the tax relief provided in paragraph 10, the Developer shall make a strict accounting of surplus earnings in excess of those permitted hereby and shall turn over to the City any excess of such surplus earnings not previously used for one or more of the purposes set forth in subparagraph (b), (1), (2), (3) and (4) of this paragraph 12.

13. The Developer shall establish and maintain depreciation, obsolescence and other reserves also surplus and other accounts, including a reserve for payment of taxes according to recognized standard accounting practices.

14. "Cost" as used herein shall include among other expenses the cost of land improvements, interest during construction, the estimated or actual expense of demolition of existing structures, the estimated or actual expense of utilities, landscaping, the actual expense of construction equipment and furnishing of buildings and improvements, including architectural, engineering and builder's fees, reasonable management and operational ex-

penses until the project is ready for its proposed use, as provided for in the approved Development Plan, together with such additional expenses incurred as a result of additions to or changes in the Development Plan where such additions or changes are approved by ordinance.

15. The terms, conditions and provisions of this contract and of the Development Plan can be neither substantially modified or limited except by mutual agreement between the City and the Developer, its successors and assigns; provided, however, that this contract shall not be construed as an enlargement of the authority conferred upon the City by Chapter 353 and other Revised Statutes of Missouri in 1969.

16. Liquidated damages in the amount of five hundred dollars ($500.00) for each month of delay may be assessed in favor of the City upon the failure of the Developer to complete the development project within the time agreed by this contract, except as said time may be extended by the Board of Estimate and Apportionment for good cause. Periods of less than a month shall be assessed upon a proportionate basis as the number of days delay relates to the total number of days in that month. Liquidated damages shall not exceed the reasonable value of any damages suffered by the City and shall be reviewable in the event of dispute between the City and the Developer by appeal to the Courts.

17. Performance or contractors bonds for each the demolition and construction involved in each phase in favor of the City shall be filed by the Developer its successors or assign with the comptroller at the time demolition and§or construction or each phase commences and in no event shall said bond be filed later than the time that the contractor is required to commence construction of a phase as set forth in paragraph 4 of this contract. The amount of each bond shall be determined

by the Board of Estimate and Apportionment when an accurate estimate of the cost as defined in Chapter 29, the Revised Code of the City of St. Louis of 1960 is ascertained through engineering studies and shall be in an amount equal to 10 per cent (10%) of such cost. Developer, its successors or assigns, may request in writing, the President of the Board of Public Service to issue a certificate of completion of any phase of any part thereof upon which a bond has been issued and upon substantial completion of the phase in accordance with the approved development plan, then the President shall issue such certificate and shall promptly notify the Comptroller of same and the Comptroller shall then forthwith discharge the surety on the performance bond. However, in the event the President of the Board of Public Service determines that the project has not been completed in accordance with the approved development plan, then the President forthwith shall transmit notice by registered mail, return receipt requested, to the Developer, stating in writing the reasons for the finding that there has not been substantial compliance. Failure to so notify the Developer within thirty (30) days after receipt of the said written request shall be deemed a certification of completion and upon presentation of proof of said written request to the Comptroller, the Comptroller shall forthwith discharge the surety on the performance bond.

18. The use of the project area shall be limited to the use described in the Development Plan, as modified for a period of not less than twenty-five (25) years from the effective date of land acquisition.

19. This contract shall remain in full force and effect so long as Developer, its successors or assigns, shall enjoy tax relief under Chapter 29 of the Revised Code of the City of St. Louis of 1960, and at the termination of such relief this contract shall

terminate and become null and void, provided that the project as herein described has been completed and so certified by the President of the Board of Public Service.

20. The rights and privileges given to the Developer, its successors or assigns by this contract and the duties imposed on the Developer by this shall apply only to the development project herein described.

21. In the event that the Developer, its successors or assigns shall be prohibited from performing the covenants and agreements herein contained, or contained in the Development Plan by the order of any Court of competent jurisdiction or in the event that the Urban Redevelopment Corporations Law of the State of Missouri and Chapter 29 of the Revised Code of the City of St. Louis of 1960, or the ordinance of which this contract is a part, shall be declared invalid in whole or in part, or shall be amended so as to materially affect this agreement in whole or in part, then, and in any such event the Developer, its successors or assigns may cancel or terminate this contract by giving written notice of its intention to do so to the City within sixty days (60) thereafter.

22. The obligation or liability of the Developer, its successors or assigns under this contract shall be contingent upon the availability to the Developer, its successors or assigns of first mortgage financing for the project at lawful interest rates.

23. All rents, profits or other revenues received from the real property included in the development area shall belong to the Developer, its successors or assigns from the time any of said real property is acquired either directly by the Developer or by the City as agent for the Developer.

IN WITNESS WHEREOF the parties have set their hands and seals the day and year first above written.

(Seal)

CITY OF ST. LOUIS, MISSOURI

By.....
Mayor

By.....
Comptroller

ATTEST:

.....
City Register

Approved as to form:

.....
City Counselor

MERCANTILE CENTER
REDEVELOPMENT
CORPORATION

By.....

ATTEST:

.....

Section Seven. The sections of this ordinance shall be severable. In the event that any section of this ordinance is found by a Court of competent jurisdiction to be unconstitutional the remaining sections of this ordinance are valid unless the Court finds the valid sections of this ordinance are so essentially and inseparably connected with, and so dependent upon, the void section that it cannot be presumed that the Aldermen would have enacted the valid sections without the void ones; or unless the Court finds that the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent. If any part of this ordinance regarding the rights or duties herein of the Developer are found invalid or unconstitutional, the Developer shall hereafter at its election, have the right to be released from the contract herein contained.

Section Eight. The passage of this ordinance being deemed necessary for the immediate preservation of the health and safety, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its approval by the Mayor.

Approved: April 5, 1973.

APPENDIX E

In the United States District Court
Eastern District of Missouri
Eastern Division

Thomas W. Garland, Inc., a Missouri corporation, Plaintiff, v. The City of St. Louis, a Constitutional Charter City of the State of Missouri, and Manley Investment Company, a Missouri corporation, Defendants.	Civil Action No. 78-0129-C(3)

FIRST AMENDED COMPLAINT

1. This action arises under the Constitution of the United States, Amendment V, and Amendment XIV of the Constitution of the United States as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.00. Jurisdiction is thereof being conferred upon this Court by Section 1331, Title 28, United States Code.

2. Plaintiff is a corporation duly organized and existing under the laws of the State of Missouri, with its main office location in the City of St. Louis, State of Missouri, at 410 North Sixth Street, and hereinafter referred to as "Garland's".

3. Defendant The City of St. Louis is a municipal corporation organized and existing as a Constitutional Charter City under the laws of the State of Missouri and hereinafter referred to as "The City".

4. Defendant Manley Investment Company is a Missouri corporation duly organized under the laws of the State of Missouri, whose registered agent is W. David Wells, One Mercantile Center, Suite 3400, St. Louis, Missouri 63101, and hereinafter referred to as "Manley". Manley is made a party to this action because it now owns the fee title to property involved herein.

5. Since 1895 Garland's has been in the business of operating women's ready-to-wear stores in the downtown business area of the City of St. Louis at or near its present location. On November 28, 1952, Garland's entered into a lease of the premises in City Block 118 of the City of St. Louis, Missouri, known and numbered as 410-414 North Sixth Street. The term of the lease was for thirty years, commencing December 5, 1952, and expiring December 4, 1982, the annual rent being $50,400.00 plus all taxes levied. It has been defined as a net, net lease.

6. Garland's operates a retail store at the leased premises and part of the premises serves as the company headquarters, which includes its administrative offices and shipping and receiving department, providing the necessary administration support for the retail store located there and other branch stores located in the City and County of St. Louis, Missouri, and its recently acquired retail store in Illinois. Until on or about April 1, 1974, the leased premises also contained Plaintiff's fur storage vault. The annual gross sales of the retail store located on the above-described leased premises during the years 1971, 1972, and 1973 were approximately $1 million. Substantial amounts of money have been invested by Plaintiff in the physical improvements of the described leased premises to provide facilities for the operation of the retail store and the portion of the

leased premises used for company headquarters' administrative operations, shipping and receiving department, and fur storage vault. Additional physical improvements have been made by way of repairs to maintain and upgrade the building in its continuing use, and other improvements have been made to meet the requirements set forth in the lease and meet the standards required by ordinances of Defendant The City.

7. Some of the more recent major improvements and expenditures made by Plaintiff in maintaining and improving its leasehold interest in the property included the following:

a. In 1969 Plaintiff restored the front of the building at a cost of $26,656.00, which work was ordered by the Building Commission of Defendant City of St. Louis. It has been estimated that the work has extended additional life to the building of forty years.

b. In 1972 Plaintiff installed forty tons of air conditioning in the premises at a cost of some $20,000.00. This was required because Plaintiff still had to honor its lease and the prior sources of air conditioning service became unreliable and economically undesirable.

c. In 1972 Plaintiff put a new roof on the building at a cost of some $3,600.00 because Plaintiff was obligated for such replacement under the terms of its lease.

8. On or about June 29, 1971, the Board of Aldermen of the City of St. Louis passed Ordinance No. 55952, which became law, providing that the entire downtown business area of the City of St. Louis, with some exceptions, was blighted as defined in Section 29.020, Revised Code of the City of St. Louis, Missouri, and that such area could be redeveloped as provided for by Chapter 353 of Missouri Revised Statutes 1969. The leased premises of Garland's at 410-414 North Sixth Street are included in the area described by this ordinance as being

blighted. A copy of said ordinance is attached hereto as Exhibit "A" and by this reference incorporated herein as if more fully set forth.

9. On or about April 5, 1973, the Board of Aldermen passed Ordinance No. 56476, which became law, providing for a contract between the City and Mercantile Center Redevelopment Corporation (hereinafter referred to as "Mercantile"). Mercantile is a corporation which was duly organized in the State of Missouri as of October 10, 1972, with an authorized capital of $30,000.00, under the Urban Redevelopment Corporation laws of Missouri. It commenced business with a $500.00 paid-in capital. Under the terms of the contract approved by Ordinance No. 56476 Mercantile was to undertake a $150 million (dollar) redevelopment of six city blocks of the downtown business area previously declared blighted, which included City Block 118 wherein is located the Garland's leased store. The ordinance also provides for the vacating of St. Charles Street, a one-way street, as a public thoroughfare which is used by Garland's as the only means of ingress of commercial delivery vehicles into the shipping and receiving area located on the alley behind the leased building. Much publicity and many public announcements were made of the passing of the ordinance and proposed redevelopment project. There were also public announcements of the commencement dates for the projects. The ordinance also authorized Mercantile to use Defendant City of St. Louis' governmental power of condemnation to clear the blight in the proposed redevelopment area for the City. The ordinance also confirmed that the City retained the right to exercise the power of condemnation in the proposed redevelopment area. A copy of said ordinance is attached hereto as Exhibits "B-1" and "B-2" and by this reference incorporated herein as if more fully set forth. (Two different copies of the ordinance were published bearing the same date.)

10. On or about March 23, 1973, and thereafter, agents for Mercantile advised and stated to Garland's officers that they would need Garland's leased property vacated by September, 1974, in order to proceed with the development of the two city block area, which includes City Blocks 118 and 119. They were also advised that the "headache ball" method of demolition was to be used on the buildings in the area, at which time Plaintiff requested a delay until the end of the fur storage season so that the furs in the storage vault valued at approximately One Million Dollars ($1,000,000.00) could be returned to customers and vacated. The infiltration of dust and dirt into the store from the "headache ball" method of demolition would have caused substantial damages to the furs in storage. Phase II of the redevelopment, under the terms of the Redevelopment Contract, Ordinance No. 56476, required Mercantile to erect a hotel of twenty-five stories with approximately 800 rooms and self-contained parking for 200 cars, containing a gross floor area of approximately one million square feet in the said City Blocks 118 and 119. This phase of redevelopment was to commence not later than April 5, 1976.

11. Commencing in the spring of 1973 Garland's, relying on the statements made to it by the agents of Mercantile and the terms and provisions of the contract under Ordinance No. 56476 between The City and Mercantile and the provisions of the ordinance which indicated it would be required to vacate its premises in City Block 118 by September, 1974, immediately undertook efforts to locate new space to replace, in the downtown business area of the City of St. Louis and elsewhere, its business premises scheduled to be taken as a part of the redevelopment plan. Garland's found none available to it in the City of St. Louis downtown area because, among other things, the entire downtown business area, with few exceptions, had been declared blighted by The City and rental costs in the redeveloped facilities, including the Mercantile Center Redevelopment Corporation's new proposed developments, were too high

to economically support a business of the type operated by Plaintiff. Garland's then found and leased on or about August 22, 1973, premises in West St. Louis County for its headquarters office, administrative offices, shipping and receiving functions and fur storage vault. By April 1, 1974, Garland's had constructed a new fur storage vault on the said premises and physically moved the fur storage portion of its operation from the store located in City Block 118. Plaintiff enjoys a good reputation in the part of the business involving the sale, storage and repair of fine furs, and its advertising states that the furs are stored in a vault on its own premises. Because the "headache ball" method of demolition was to be employed, it could no longer store some One Million Dollars ($1,000,000.00) of furs in the storage vault on the leased premises in City Block 118 because the dirt and dust would do substantial harm to the furs. Also, to provide retail facilities to its many East Side (Illinois) customers and replace the store on the leased premises in City Block 118 which had been patronized by them, Plaintiff on or about December 10, 1973, entered into a lease for a retail store in Fairview Heights, Illinois, in the St. Clair Shopping Center. Additionally, to replace the retail store in City Block 118 and provide facilities for the many Southeast Missouri and Southwest Illinois customers who used the arterial highway system to patronize the store at 410-414 North Sixth Street, Garland's entered into a lease for a retail store in the South County Shopping Center located in South St. Louis County, Missouri, on or about November 29, 1974. Plaintiff had to expend approximately $490,000.00 for capital improvements to prepare these three facilities for occupancy.

12. All of the undertakings set forth in Paragraph 11 were required to prevent a material disruption of Plaintiff's business and substantial economic loss which would have occurred as a direct result of the loss of the leased premises located in the proposed redevelopment area of City Block 118. They were all undertaken at that time solely in reliance on the statements made

to Plaintiff's offcers by agents of Mercantile that the property would have to be vacated by September, 1974, and in consideration of the terms and provisions of the contract between The City and Mercantile and the provisions of the ordinance. At no time prior to this time had Plaintiff contemplated moving its fur storage, administration office, and shipping and receiving department from the leased premises or leasing premises in Illinois or South St. Louis County for new stores. Such expansion was, in fact, not in accordance with the normal methods of operation and opening new stores by Garland's because it required the use of a large amount of borrowed capital to finance the construction of improvements and, further, because of the marginal operations of new stores until they have time to build up a trade at a new location, normally a period of three to five years, during which time they are not economically self-supporting. Such undertakings strained the financial resources of Garland's.

13. Defendant Manley, incorporated under Missouri law on May 10, 1972, with an authorized capital of $30,000.00 and a $500.00 paid-in capital, to the best of Plaintiff's knowledge, information and belief, commenced in 1973 and 1974 to acquire the ownership of the property in City Blocks 118 and 119 as agent for Mercantile. It secured from Defendant City of St. Louis permits to demolish by the "headache ball" method the buildings in City Block 118 behind Plaintiff's leasehold. The buildings were required to be removed as blighted by Ordinances Nos. 55952 and 56476. This work caused these properties to be vacated of their businesses and the buildings thereon were demolished by the "headache ball" method. During the demolition process thick dust clouds surrounded the area around Plaintiff's leasehold and filtered into Plaintiff's premises in spite of precautions taken by Plaintiff, which included putting plastic over its windows and covering its merchandise. The debris and rubble blocked the alley which provided ingress and egress to its loading dock. It clogged and caused Plaintiff's air condi-

tioning to malfunction many times and operate inefficiently. The equipment and method used physically damaged the structural members of Plaintiff's store building and caused openings into the basement area which allowed water to seep into the building, and walls in the upper story of the building were cracked. With the exception of Garland's store and a jewelry company which moved to the building south of Garland's, the entire two-block area was stripped of its business and commercial enterprises. The part of City Block 118 behind Plaintiff was turned into a parking lot, and the stores and buildings along Sixth Street in City Blocks 118 and 119, with the exception noted above, are vacant buildings, a couple of which have recently been rented on short-term, indefinite bases. The effect of these actions by The City in blighting the area and scheduling the redevelopment of City Blocks 118 and 119 by the terms of the contract with Mercantile and in authorizing the demolition of the surrounding buildings was a destruction of the business character of the east side of Sixth Street and destroyed the economic value of the property in City Block 118, including Plaintiff's leasehold interest. Defendant City has caused condemnation blight to take over the two city blocks area making Garland's leased premises unattractive and unusable for the use for which it was leased.

14. Defendant City of St. Louis has permitted the remaining buildings in the two-block area to remain in a state of disrepair and has not required Manley Investment Company, which Plaintiff believes to be an agent of the redeveloper (Mercantile), to maintain the buildings, has permitted trash and debris to accumulate in the doorways and opening of the building, has allowed the sidewalks to become hazardous to negotiate and left in a state of disrepair, did not require the owner of other buildings in the said city blocks to remove snow or ice during the winter months, and generally created an unslightly and repulsive appearance to the said City Blocks 118 and 119, which has resulted in a substantial reduction of pedestrian traffic on

the east side of Sixth Street in the two-block area. All of the above was permitted to exist contrary to ordinances of Defendant City of St. Louis and Paragraph 5, Page 5, of Ordinance No. 56476, the contract between Defendant City and Mercantile. All of these acts by The City and the conditions existing in City Blocks 118 and 119 resulted directly from the commencement of work on the redevelopment plan. The acquiring of property and removing of the other businesses around Plaintiff's property, along with the demolishing of buildings and the imposition upon the area of condemnation blight, effectively deprived Garland's of its legal rights to the full use and economic value of its leasehold interest in the real estate located at 410-414 North Sixth Street. All the changes in City Blocks 118 and 119 were made for the purpose of carrying out the plan of redevelopment and were being done by The City under its authority for the public purpose of clearing the blight from this area, and the private purpose of redeveloping the area which The City claims to be blighted for a different profit-making, non-public purpose. On January 22, 1975, Manley acquired the fee interest to the premises known as 410-414 North Sixth Street, subject to Garland's lease. As a direct result of these acts of The City in blighting and authorizing the demolition of buildings and permitting the area around Plaintiff's store to deteriorate and become unsightly as aforesaid and causing the neighboring businesses to leave the area as part of the activities required for the purpose of redevelopment, sales in the Garland store located on the said premises have consistently declined since 1973, while sales in its other stores have shown an increase. The area around Plaintiff's premises in City Block 118 has been economically depressed, and since April 1, 1973, Plaintiff has been deprived of its legal rights to the full use of its leasehold interest in the said property. Plaintiff has had to operate the store at 410-414 North Sixth Street for the years 1974, 1975, 1976, and 1977 without profit or the ability of the store to provide for its portion of the unallocated overhead which it formerly earned.

15. Defendant The City, though taking actions which destroyed the economic value of Plaintiff's leasehold for a public purpose, has never offered to purchase or compensate Garland's for the taking of its leasehold interest. The City, by passing Ordinances Nos. 55952 and 56476 and by contracting with Mercantile to redevelop the area in City Blocks 118 and 119, which included the demolishing of the buildings then located in the area, effected a de facto, if not an actual, condemnation of Garland's leasehold interest as of April 1, 1974. Since that date Plaintiff's legal rights to use its leasehold have been so substantially interfered with that it has been totally deprived of its economic value for which it should be compensated according to law. As a direct result of such taking and delay in proceeding with the condemnation after partial performance of the redevelopment, The City has caused consequential damages in addition to the actual damages for the taking of the leasehold interest by causing Plaintiff to have to continue to pay taxes, rent, insurance and maintenance on the premises for a portion of the year 1974 and the years 1975, 1976, and 1977. Plaintiff will continue to suffer such consequential damages until its leasehold has been legally terminated and compensated for according to law.

16. Defendant City of St. Louis under its Charter, Article XXI, Section 1(a), was required to commence condemnation proceedings within six months after the effective date of the ordinances enacted for redevelopment of City Block 118, but it has to date failed to commence such action. A copy of said Charter provision is attached hereto as Exhibit "C" and by this reference incorporated herein.

17. Upon information and belief, Plaintiff alleges further that Defendant City of St. Louis failed to secure a detailed statement of the proposed method of financing the redevelopment as required by Section 29.080(15), Revised Code of St. Louis; that Defendant City of St. Louis failed to supervise and assert its

rights under the contract and the law to assure performance and completion of the redevelopment plan and thereby permitted the conditions set forth above to exist and caused the deprivation of and interference with the property rights of Plaintiff and the destruction of the total economic value of its leasehold interest. Although Plaintiff's agent had requested to review the proposed plan of redevelopment submitted by Mercantile prior to the filing of this suit, the plan was denied to it until recently filed by Defendant City of St. Louis as a part of its memorandum of law, and Plaintiff just became aware of the failure of the redevelopment corporation to file a detailed plan of financing in the project. The statement filed, in view of the undertaking of a $150 million project by a corporation capitalized for $30,-000.00, with $500.00 paid-in capital, raises serious procedural, due process and equal protection questions under the Constitution as to the actions by the Board of Aldermen and Defendant City of St. Louis in approving the ordinances of redevelopment with Mercantile. A copy of the financial statement portion of the proposed plan is attached as Exhibit "D" and by this reference incorporated herein.

18. The law of Missouri as stated by the Missouri Supreme Court and the Missouri Court of Appeals is that there is no condemnation until the actual filing of suit and payment of Commissioner's Award for the property and passing of title, and there is no known legal recourse under the state laws to Plaintiff where situations such as alleged here exist in that Defendant City of St. Louis commences actual removal of the blighted area, partially performs the requirements for a plan of redevelopment, and then permits it to go dormant after effectively destroying the economic value of the area and fails to comply with the due process requirement of the law. The time for commencing the phase of redevelopment encompassing City Blocks 118 and 119 has now passed and, except for the removing of buildings and businesses from the area, the boarding-up of vacant buildings and permitting condemnation blight to take over the area,

no further action of redevelopment is presently planned because of apparent ab initio lack of proper financing for the requirements by the project.

19. Plaintiff, relying on the requirements of the redevelopment laws and the ordinances, purportedly enacted pursuant thereto, and relying on the representations of the agents of the redevelopment corporation which contracted with Defendant City of St. Louis, has expended large sums of money to acquire facilities to replace the leasehold taken. As a direct result of the delay in proceeding with the plan and after The City caused the demolishing of buildings and the destroying of the commercial character of City Blocks 118 and 119, Garland's is still being forced to operate at a financial loss the facilities it replaced. The City has created condemnation blight in the area around Plaintiff's leasehold property which has destroyed the economic value, benefit and full use of the lease and, hence, Plaintiff is being deprived of its legal interest in its property by Defendant City of St. Louis for a public purpose. Thus, The City has taken Garland's property for a public use as stated in the above-referenced ordinances without just compensation, which is a direct violation of the Fifth and Fourteenth Amendments to the Constitution of the United States. By causing and permitting the threat of condemnation to hang over Plaintiff's leasehold property for a period of over four years, by taking actions which destroyed the commercial character of the two City Blocks 118 and 119 and permitted condemnation blight to set into said area, by failing to comply with the provisions of The City's own Charter requiring The City to commence actions of condemnation within six months after the effective date of the ordinances, by failing to secure a detailed financial statement as required by The City's own Revised Code, by failing to supervise and exercise The City's rights under the ordinances to assure completion of the property, by permitting and tolerating the destructive conditions imposed upon City Blocks 118 and 119, and by permitting the partial performance

of the redevelopment plan without taking corrective action, Defendant City of St. Louis has abused the power of eminent domain and deprived Plaintiff of its legal interests in its leasehold and the full use and benefit of its leasehold interest in the said property and legally, physically and directly interfered with Plaintiff's use of the property, all of which amounts to taking or damaging of Plaintiff's property without due process of law and denial of equal protection of the laws, all in violation of Plaintiff's constitutional rights under the Fifth and Fourteenth Amendments to the Constitution of the United States.

20. The value of the leasehold at the time of the taking was approximately $659,000.00, which is just compensation therefor. There are also consequential damages incurred as a direct result of the taking, causing Garland's to remain and continue to carry on business with the expenditure of attending expenses in the premises located at 410-414 North Sixth Street in City Block 118 from April 1, 1974, to December 31, 1977, during which time the lease was devoid of economic value by the conduct and action of the City, which resulted in moving out established businesses from City Blocks 118 and 119 and tearing down the buildings, permitting condemnation blight to set in, and destroying its business character. Two elements of these consequential damages are the amount of rent paid for the period, which is in the sum of $187,304.85, and the amount of taxes paid during this period as additional rent, which is in the sum of $44,185.09. Plaintiff has further suffered consequential damages as a direct result of the taking during the period in an amount representing the cost of insurance and maintenance for said premises, which is in the sum of $64,822.00. In addition, as a direct result of the action of the City in condemning the premises of Garland's, it has suffered additional consequential injury and damage to its business as a direct result of the taking in the sum of $700,000.00. Additional consequential damages as yet undetermined will result to Plaintiff until its leasehold and the obligations thereunder are terminated by law.

21. There presently is an impossibility of performance of the lease dated November 28, 1952; that performance of said lease has been rendered impossible by the acts of the City in passing Ordinances Nos. 55952 and 56476 and the actions taken in pursuance thereof which have depressed and stripped the area around Plaintiff's premises of its business and commercial character and rendered its once profitable lease valueless.

WHEREFORE, Plaintiff prays for judgment herein against Defendant the City of St. Louis in the sum of $659,000.00 as just compensation for the condemnation and taking of Plaintiff's leasehold interest in and improvements of the property located in City Block 118, known and numbered as 410-414 North Sixth Street, and for the sum of $296,311.94 for the consequential damages suffered by Plaintiff as a direct result of condemnation of Plaintiff's leasehold interest in said property which accrued during the period of April 1, 1974, to December 31, 1977, and for such amounts as the Court finds due on the evidence adduced from January 1, 1978, to the date of the judgment herein; and for a judgment in the sum of $700,000.00 as and for the consequential damages to Plaintiff's business broken up and interrupted by the taking of Plaintiff's leasehold interest for a public purpose; and for an order of Court adjudging and decreeing herein that the lease dated November 28, 1952, on said property between Plaintiff and Defendant Manley Investment Company is terminated, null and void and no effect as to Plaintiff, and that Plaintiff has no further liabilities thereunder; and, further, Plaintiff prays for a judgment that all sums herein awarded as just compensation for the taking of the leasehold include interest at the rate of 6% per annum from the date of such taking to the date of the entry of this judgment; and for its costs herein expended; and for such other and further relief as to this Honorable Court may seem meet, just and proper in the premises. Plaintiff requests

a trial by jury on any and all issues herein made by this Complaint.

/s/ ALLEN A. YODER
ALLEN A. YODER
Attorney for Plaintiff
700 Boatmen's Tower
100 North Broadway
St. Louis, Missouri 63102
241-5845

Of Counsel:
RASSIEUR, LONG, YAWITZ
& SCHNEIDER
700 Boatmen's Tower
100 North Broadway
St. Louis, Missouri 63102
241-5845

Certificate of Service

The undersigned certifies that copies of the foregoing First Amended Complaint were mailed this 2nd day of June, 1978, by first-class United States mail, postage prepaid, to Jack L. Koehr, City Counselor, 314 City Hall, St. Louis, Missouri 63103, and to Thompson & Mitchell, Donald J. Stohr, One Mercantile Center (Suite 3400), St. Louis, Missouri 63101, Attorneys for Defendant Manley Investment Company.

/s/ ALLEN A. YODER

EXHIBIT A TO FIRST AMENDED COMPLAINT IS THE SAME ORDINANCE 55952 SET OUT IN ORIGINAL COMPLAINT, APPENDIX D, *SUPRA*

EXHIBIT B TO FIRST AMENDED COMPLAINT IS THE SAME ORDINANCE 56476 SET OUT IN ORIGINAL COMPLAINT, APPENDIX D, *SUPRA*

APPENDIX F

United States Court of Appeals for the Eighth Circuit
No. 78-1896

Ruby Young, Monroe Young, Kim Greene, Joseph Weaver, Georgia Weaver, Ollie Green, Thomas Green, and Barbara Bradshaw, Individually and on Behalf of All Others Similarly Situated, Appellants, v. Patricia Harris, Sued in Her Official Capacity as Secretary of the United States Department of Housing and Urban Development; Pantheon Corporation, a Corporation; Pershing Redevelopment Corporation, a Corporation; City of St. Louis, a Body Corporate; John Young; Thelma Young; Richard Shelton; Lipton Realty, Inc., a Corporation; and The St. Louis Housing Authority, a Municipal Corporation, Appellees.	Appeal from the United States District Court for the Eastern District of Missouri

Submitted: March 15, 1979
Filed: June 13, 1979

Before GIBSON, Chief Judge, ROSS and McMILLIAN, Circuit Judges.

GIBSON, Chief Judge.

This is an appeal from the District Court's[1] denial of appellants' motion for a preliminary injunction restraining appellees from continuing the redevelopment of the Pershing-Waterman area of St. Louis, Missouri. Jurisdiction in this court rests upon 28 U.S.C. § 1292(1).

I

Appellants represent a class of persons who are present and former lower-income, predominantly black residents of the 106-acre redevelopment area in St. Louis, Missouri, known as the "Pershing-Waterman" area. Appellees represent various interests allegedly engaged in the project of redeveloping the Pershing-Waterman area.[2] Appellants filed their complaint on November 3, 1978, requesting declaratory, mandamus and injunctive relief because of alleged violations of three federal statutes,[3] the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA), 42 U.S.C. §§ 4601 *et seq.*, the Housing and Community Development Act (HCDA), 42 U.S.C. §§ 5301 *et seq.*, and the National Environmental Policies Act (NEPA), 42 U.S.C. §§ 4321 *et seq.* The complaint also requested a temporary restraining order restraining any interference with the tenancy and quiet enjoyment of the

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[1] The Honorable James H. Meredith, Chief Judge, United States District Court for the Eastern District of Missouri.

[2] It would appear, however, that several of the appellees have only a tenuous connection with the redevelopment project and are not appropriate parties in this lawsuit. No relief is requested against the individual private owners of property, and the St. Louis Housing Authority has no present or future possessory interest in the development area and has had no involvement with the redevelopment project.

[3] Appellants' complaint also alleged violations of ordinances of the City of St. Louis, Nos. 56125, 56126, 56127, and 57217, the Missouri Relocation Assistance Act, MO. REV. STAT. §§ 523.200 *et seq.*, and the Federal Civil Rights Act, 42 U.S.C. §§ 2000(d) *et seq.*, but they have not raised these arguments on appeal.

appellants still residing in the Pershing-Waterman area,[4] and prohibiting further demolishing of any dwelling units located within the area. The District Court immediately granted a temporary restraining order and scheduled a hearing on appellants' motion for a preliminary injunction for November 9, 1978, on which date the court dissolved the temporary restraining order.

Appellants alleged that they would suffer irreparable injury in the form of deprivation of housing if appellees were not enjoined from evicting persons in the redevelopment area; from discontinuing utilities, services, and maintenance of appellants' apartments; from demolishing any more buildings in the redevelopment area; from disbursing and expending federal Community Development Block Grant funds in the area; and from taking any further redevelopment actions incompatible with accommodating the housing needs of the people who have been or will be displaced as a result of the project. The District Court denied the request for a preliminary injunction on December 7, 1978. It found that appellants failed to show that they were likely to succeed on the merits of their claims regarding statutory violations and also concluded that "the harm done those plaintiffs who may be forced to move while this case is proceeding is considerable, but later legal and equitable relief will be adequate to restore their rights if they are found to have been displaced wrongly, without benefits."[5] The District

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[4] The 106-acre area previously had a relatively high concentration of residential dwellings, but many persons left the area because of its deteriorating condition and high crime rate. Many of the buildings were abandoned, vacant, and vandalized. Prior to the present developer's activity, the area had degenerated to the point that only 500 dwelling units remained occupied. The current plan of development calls for over 2,000 completely rehabilitated and new units, with § 8 HUD subsidies available for twenty percent of the rental units. The plan envisions a racially, socially, and economically integrated neighborhood.

[5] The District Court noted that the appellants failed to post a bond securing against losses as required by FED. R. CIV. P. 65, but we do not rely upon this as a basis for upholding the denial of a preliminary injunction. Because of our evaluation of the other issues, we need not determine if specific equitable or legal considerations in this case might require that the bond be waived or set at a nominal amount. The record fails to show the number of families adversely affected by the rehabilitation program. There is evidence indicating only about 150 families are left in the area, and according to the private developers only three families will be involuntarily displaced as a result of the developers' future activities.

Court denied appellants' request to enter an injunction pending appeal on December 12, 1978, and this court did likewise on December 29, 1978. We now affirm the order of the District Court denying a preliminary injunction.

II

In April 1971 the City of St. Louis declared the Pershing-Waterman area to be blighted and designated it as a redevelopment area pursuant to the Missouri Urban Redevelopment Corporation Law, MO. REV. STAT. §§ 353.010, *et seq.* (1969). Under the Urban Redevelopment Corporation Law, corporations organized according to the statute with a public purpose of redeveloping blighted areas[6] may be granted special privileges. These privileges include the power of eminent domain and property tax abatements on redeveloped property. Initially, two corporations, the Kingsbury Redevelopment Corporation and the Forest Village Redevelopment Corporation, were organized according to the Urban Redevelopment Corporation Law for the purpose of redeveloping the Pershing-Waterman area. The City of St. Louis approved the redevelopment plans submitted by them and granted both the power of eminent domain and property tax abatements. The redevelopment planned

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[6] MO. REV. STAT. § 353.030 provides in relevant part:

> The articles of agreement or association shall be prepared, subscribed and acknowledged, and filed in the office of the Secretary of State pursuant to the general corporations laws of the State and shall contain: * * * (11) a declaration that the corporation has been organized to serve the public purpose; that all real estate acquired by it and all structures erected by it are to be acquired for the purpose of promoting the public health, safety and welfare, * * *.

by these corporations, however, never materialized due to their inability to obtain financing.

Pantheon Corporation, a general business corporation, was incorporated on January 21, 1972, with Leon R. Strauss as the sole stockholder. In 1974, Pantheon formulated a coordinated redevelopment plan for the Pershing-Waterman area. Pursuant to this plan, it created the Pershing Redevelopment Corporation (developer) on May 30, 1975, a wholly-owned subsidiary incorporated as a Missouri Urban Redevelopment Corporation under MO. REV. STAT. Ch. 353, and acquired the stock of both the Kingsbury and Forest Village Corporations in May 1975 and February 1976, respectively. Pantheon also engaged in substantial efforts to obtain financing for its plan. As a part of this effort it arranged a multi-million dollar financing commitment from Mercantile Trust Company National Association in the form of a revolving credit agreement, subordinated debentures, and other loans. The redevelopment plan financing consists of wholly private capital, with the only aspect of federal assistance in the form of mortgage insurance by the Department of Housing and Urban Development (HUD).

On June 22, 1976, the Board of Aldermen of the City of St. Louis approved Ordinance 57217, approving the redevelopment plan and setting forth an agreement between the developer and the city regarding the development. The agreement bestowed upon the developer all of the rights and benefits available under MO. REV. STAT. Ch. 353, and also provided for the city to undertake certain obligations with regard to the project. These obligations generally related to normal municipal services.[7]

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[7] City of St. Louis Ordinance 57217 provides in relevant part:

10. The City agrees to cooperate with Developer and with due diligence to join with the Developer in procuring all changes, improvements and additions in municipal services respecting the Development Area consistent with the Development Plan

The City of St. Louis has applied for and received substantial amounts of federal Community Development Block Grant (CDBG) funds, available under the Housing Community De-

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deemed necessary by the City and the Developer, including but not limited to the following items which it is hereby expressly agreed are deemed necessary by the City and Developer:

(a) The City will, at Developer's request, promptly effect the vacation, opening and closing (temporary and permanent) of streets, alleys, and cul-de-sacs as provided for in the Development plan, and will promptly pay the cost of land acquisition necessary for opening or widening of streets, alleys and cul-de-sacs.

(b) The City will cause its several agencies to cooperate with the Developer in land assemblage and, particularly with respect to acquisition of parcels held or acquired by Land Reutilization Authority.

(c) The City will cooperate in the rezoning of property as provided for in the Development Plan, and in the approval of applications for Community Unit Plans, for Planned Residential Developments, * * * other unit or block development.

(d) The City will perform all necessary demolition work within the Development Area at its own expense.

(e) The City will aid through its Department of Welfare in the relocation process.

(f) The City will, at its cost, perform all necessary improvements to all existing streets which remain as part of the final development. These improvements to include widening, narrowing, resurfacing, curb and gutter repair, sidewalk installation and repair, street lighting and signal changes, median installations, planting strip areas, and cul-de-sac and turn around installations as determined by the approved street pattern configuration.

(g) The City will, at its cost, provide public park improvements for those areas so designated by the approved Development Plan.

(h) The City will take all other necessary and proper steps to insure that adequate municipal services consistent with the development of the area will be rendered to the Development Area.

All of the foregoing shall be accomplished in order to permit the timely development of stage of the development in accordance with the schedules established in the Development Plan and shall constitute a condition precedent to Developer's obligation to proceed, failure of which condition shall be deemed a cause of delay beyond Developer's reasonable control.

velopment Act, 42 U.S.C. §§ 5301 *et seq*. The city uses these funds, together with general revenues, to provide a variety of municipal services on a city-wide basis. In its annual applications for the CDBG funds, the city has indicated that portions of the funds would be used to provide services in the Pershing-Waterman area.[8] The city, however, contends that the approval of the applications does not commit it to apply the CDBG funds directly to its obligations with respect to the redevelopment project and that the funds are expended for services throughout the city. It is undisputed that the agreement

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[8] The "Year II" application for funding for April 1 through December 31, 1976, did not directly request funds in support of the Pershing-Waterman project, but the "Year III" application for 1977 requested $374,000 in block grant funds for the area, stating:

> The City of St. Louis will initiate public improvements in support of the Pershing Redevelopment Corporation Law (Chapter 353 R.S.Mo.). The approved redevelopment plan requires extensive reconstruction and improvements on DeBaliviere Avenue, to include sidewalk and curb construction, median construction, landscaping, fixture adjustments and relocation, and planting. The improvements will be administered by the Land Clearance Authority.

It also requested $650,000 to fund the city's Land Clearance Authority, stating in part:

> The Authority will assume administrative responsibilities for the Lafayette Towne, Lucas Heights, and Pershing-Waterman Redevelopment projects.

The city's 1978 application continued the request for funds to support the project, but increased the requested amount to $503,000, stating:

> The City of St. Louis will continue to fund public improvements in support of the Pershing Land Corporation under the Missouri Urban Redevelopment Corporations Law (Chapter 353). The approved redevelopment plan requires extensive reconstruction and modification of Pershing, Waterman, Clara and Belt. Improvements to be administered by the Land Clearance Authority will include strict resurfacing, curb and sidewalk and cul-de-sac construction.

The application also requested funding for code enforcement and demolition services that may have benefited the redevelopment project.

between the developer and the city does not specify the source of funding for the municipal services to be provided.

Since the city's receipt of CDBG funds required it to comply with the requirements of NEPA regarding preparation of a statement assessing the environmental impact of their expenditure, 42 U.S.C. § 5304(h); 24 C.F.R. § 53.15, the city published a statement in August 1976 to the effect that an environmental impact statement was not required because the funded activities would not significantly affect the human environment. On January 11, 1977, following a fifteen-day time period for public comment and review, HUD approved the environmental certificate for release of funds. Although city funds have been used to provide usual and normal municipal services to the area, such as streets and sidewalks, all of the residential units and dwellings are privately owned; in addition, private funds are used exclusively in the rejuvenation program.

III

In *Dakota Wholesale Liquor, Inc. v. Minnesota,* 584 F.2d 847, 848-49 (8th Cir. 1978), this court reviewed the law regarding the proper standard to be applied by a district court in determining whether a preliminary injunction should be ordered:

> The traditional tests have been that the party seeking the injunction must prove that "(1) there is a substantial probability that it will succeed at trial on the merits of its claims and (2) it will suffer irreparable injury if injuncitve relief is not forthcoming." *Planned Parenhood, Inc. v. Citizens for Community Action,* 558 F.2d 861, 866 (8th Cir. 1977). However, in *Fennell v. Butler,* 570 F.2d 263, 264 (8th Cir. 1978), this court directed the district court on remand to apply the preliminary injunction standards used in the Second Circuit. The Second Circuit has held that:

> [A] preliminary injunction should issue only upon a clear showing of either (1) probable success on the merits *and* possible irreparable injury, *or* (2) sufficiently serious questions going to the merits to make them a fair ground for litigation *and* a balance of hardships tipping decidedly toward the party requesting the preliminary relief.
>
> *Sonesta Int'l Hotels Corp. v. Wellington Assocs.*, 483 F. 2d 247, 250 (2d Cir. 1973).

Also, we noted the limited nature of our scope of review. We cannot reverse unless we conclude that the district court abused its discretion. 548 F.2d at 849. *See also Campbell "66" Express, Inc. v. Rundd*, No. 79-1046 (8th Cir. April 23, 1979). Since this court has not acted *en banc* on this modification of the traditional test, we express no opinion as to whether or not it should be applied in this case. Suffice it to say that we have concluded that the trial court did not err under either test.

In making this determination we have considered the probability of success at trial and the seriousness of questions going to the merits in the application of three federal statutes. We address them *seriatim*.

IV

The District Court held that it was unlikely that the appellants could prove that they were entitled to federal relocation benefits under the URA. It found that the developers' redevelopment corporations are private entities under Missouri law, and that there was no evidence of federal aid within the meaning of the URA.

Section 4625(a) of the URA provides in relevant part:

> (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any

> State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section.

Section 4601(6) of the URA defines the term "displaced person" as:

> any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a *program or project undertaken by a Federal agency, or with Federal financial assistance*; * * *. [Emphasis added.]

The developer does not claim to have provided relocation assistance as required by the URA. It argues that the URA does not apply to its redevelopment activities in the Pershing-Waterman area because appellants are not "displaced persons" because it acquired real property solely in its capacity as a private developer and without federal financial assistance.[9]

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[9] As noted in footnote 4, the deteriorated condition of the housing caused the bulk of the residential displacements that have occurred in the Pershing-Waterman area. This displacement took place before 1976, when Pantheon commenced its redevelopment program. The URA would not apply to these displacements because they did not directly result from an actual or proposed acquisition of property for a governmental program or project. Also, some of the displacements directly at issue in this suit likewise fail to meet the requirement that they result from acquisition of the property because they have been caused by the rehabilitation of property by its present owner. The rehabilitation efforts of the private property owner, Richard Sheldon, exemplify this situation, where any displacement is unrelated to an acquisition of property for a governmental program or project. The United States Supreme Court, in *Alexander v. United States Department of Housing and Urban Development*, 47 U.S.L.W. 4369 (U.S. Sup. Ct. April 17, 1979), recently explained that Congress intentionally restricted the definition of a "displaced person" to the context of a property acquisition for a program or project. *See also Blount v. Harris*, 593 F.2d 336 (8th Cir. 1979).

It is the established law in this circuit that the URA definition of "program or project undertaken by a Federal agency, or with Federal financial assistance" does not encompass the situation when a private party undertakes a federally assisted program or project and acquires property. *Moorer v. Department of Housing and Urban Development*, 561 F.2d 175 (8th Cir. 1977), *cert. denied*, 436 U.S. 919 (1978); *see also Alexander v. United States Department of Housing and Urban Development*, 47 U.S.L.W. 4369, 4372 n.9 (U.S. Sup. Ct. April 17, 1979); *Conway v. Harris*, 586 F.2d 1137 (7th Cir. 1978); *Parlane Sportswear Co. v. Wienberger*, 513 F.2d 835 (1st Cir.), *cert. denied*, 423 U.S. 925 (1975). Thus the URA would not apply to the Pershing-Waterman redevelopment project if it were found that the project had been undertaken by a private party as opposed to a federal, state, or local governmental agency, or in the alternative, if it were found that the project had not received federal financial assistance. Resolution of both these issues depends upon whether the appellants' characterization of the project as a joint undertaking in the nature of a partnership between the private developer and the City of St. Louis accurately portrays the organization of the project. We find that the evidence is clearly inadequate to establish that the activities of the City of St. Louis and the private developer are sufficiently intertwined to characterize them as one project undertaken by a state instrumentality.

The primary sources of the developer's relationship with the City of St. Louis are MO. REV. STAT. Ch. 353 and City of St. Louis Ordinance 57217. These give the developer special privileges such as the power of eminent domain and tax abatements, and the City of St. Louis has pledged certain assistance to the developer's project. This assistance has taken various forms. The City has demolished nine vacant buildings, has provided various street improvements, and has sold land to the developer at extremely low cost by virtue of tax foreclosure sales. At the same time, the developer is a privately-held cor-

poration. It was organized and is controlled by private interests, and has arranged to finance its project from wholly private sources. On this evidence, we cannot say that the assistance provided by the city because of its desire to encourage and promote private redevelopment of blighted areas is sufficient to deprive the developer's project of its status as a private project; a contrary holding is clearly indicated.

The cases cited by appellant dealing with state action under the fourteenth amendment are inapposite because they do not reflect congressional intent regarding the URA. The URA defines a state agency as "any department, agency, or instrumentality of a State or of a political subdivision of a State, * * *." 42 U.S.C. § 4601(3). The House Report on the URA stated that this definition was "self-explanatory." H.R. Rep. No. 91-1656, 91st Cong., 2d Sess., *reprinted in* [1970] U.S. CODE CONG. & AD. NEWS, 5852-53. The creation of urban redevelopment corporations has not been interpreted as the conversion of private resources into a governmental entity. The states have enlisted the aid of private enterprise to combat urban blight, but have not sought to change the status of these corporations from privately owned, profit-motivated enterprises. *See Berman v. Parker*, 348 U.S. 26, 33-34 (1954) (acquisition by federal agency, but redevelopment by private enterprise); *Council Plaza Redevelopment Corp. v. Duffey*, 439 S.W.2d 526, 528 (Mo. 1969); *Annbar Associates v. West Side Redevelopment Corp.*, 397 S.W.2d 635, 643 (Mo. 1965), *appeal dismissed*, 385 U.S. 5 (1966); MO. REV. STAT. § 610.010(2) (1979 Supp.).

Although in *Moorer v. Department of Housing and Urban Development, supra* at 183, we addressed the application of the URA in terms of whether the real property had been acquired "by a governmental entity with the power of eminent domain," this did not imply that the mere grant of the power of eminent

domain created a governmental entity. Although the grant of the power of eminent domain in some circumstances might indicate the existence of a state instrumentality within the meaning of the URA, we conclude that the other factors reflecting the private nature of the redevelopment project outweigh the significance of the mere grant of the power in this case. There is no evidence that the developer used its eminent domain power to cause any displacements. Historically, the power of eminent domain has been granted by legislative enactment to private corporations, of which railroads and private utilities are prime examples. This grant does not transform these private corporations into governmental entities or instrumentalities of the state.

We agree with the District Court that the evidence indicates that both the Pantheon and Pershing Redevelopment Corporations should be considered private entities. Thus, acquisitions of property by these corporations in furtherance of their redevelopment project would not be within the scope of the URA.

Whether the project has received federal financial assistance depends upon an evaluation of the city's use of the Community Development Block Grant funds.[10] Since we have already concluded that the city's agreement with the developer clearly did not render the developer's project a joint undertaking, financial assistance for municipal services cannot necessarily be equated with financial assistance to the private redevelopment project. This is especially true if the city was not required directly to apply or channel the Community Development Block Grant funds to the municipal services it provided in the Pershing-Waterman area. In any event, federal financial assistance to a private project is insufficient to bring the project into the realm

[10] Although project funds were backed by federal mortgage insurance from HUD, the URA specifically exempts this from its definition of "federal financial assistance." 42 U.S.C. § 4601(4).

of the URA. *See Conway v. Harris, supra; Parlane Sportswear Co. v. Weinberger, supra.*

V

Appellants also alleged the city's failure to comply with Community Development Block Grant application requirements as a basis for the preliminary injunction. Title 42 U.S.C., section 5304(a) requires that Community Development Block Grant applications contain a housing assistance plan, and the 1977 congressional amendments added that this plan must include "provision of a reasonable opportunity for tenants displaced as a result of [restoration and rehabilitation] activities to relocate in their immediate neighborhood, * * *." 42 U.S.C. § 5304(a)(4)(C). The District Court determined that this requirement did not apply to the Community Development Block Grant funds currently available to the city, because HUD provided that the implementing regulations were effective as of August 1, 1978. 24 C.F.R. § 570.300(b)(4). We do not address the issue of the effective date of this requirement because it is unlikely that appellants could succeed on the merits of their claim, assuming that the requirement applied to the city's 1978 application. The discussion regarding the application of the URA reveals that the privately designed and implemented Pershing-Waterman redevelopment plan cannot be viewed as a project of the City of St. Louis. Thus the city would not be required to meet the provisions of 42 U.S.C. § 5304(a)(4)(C) in order to be eligible for the Community Development Block Grant funds it has received to provide municipal services in the Pershing-Waterman area. The city's efforts to improve this area can be viewed as separate from the activities of the private developer.

VI

Appellants' allegation concerning the violations of the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*,

relies upon the city's failure to include the actions of the private developer in the city's environmental assessment of its use of the Community Development Block Grant funds. The Housing Community Development Act, 42 U.S.C. § 5304(h), requires applicants for Community Development Block Grant funds to comply with NEPA, and HUD's regulations place the responsibility for this compliance upon the applicant. 24 C.F.R. § 58.15(a). In 1976, the city prepared its environmental assessment of its Community Block Grant-assisted activities, and concluded that they did not constitute action which would significantly affect the human environment. The city did not assess the separate activities of the private developer in the Pershing-Waterman area. Our previous conclusion, that the city was not a partner to these activities, controls the issue of whether this failure would constitute a violation of NEPA. Since the redevelopment activities were not designed by the city, and were implemented by private parties, it was reasonable not to include them in the environmental assessment. *See Minnesota Public Interest Research Group v. Butz*, 498 F.2d 1314, 1320 (8th Cir. 1974). The assessment is not challenged on any other basis.

VII

The District Court also determined that the preliminary injunction should not be granted because it was not necessary to avert irreparable harm, and because the possibility of injury to the public and to the appellees would be greater than any injury suffered by appellants. These findings alone are a sufficient basis for the denial of a preliminary injunction. In its determination, the District Court also considered the potential impact of a preliminary injunction upon the public welfare. In *Minnesota Bearing Co. v. White Motor Corp.*, 470 F.2d 1323, 1326 (8th Cir. 1973), this court stated:

> Other factors which may be considered in the decision to grant or to deny the request are the absence of substantial harm to other interested parties, and the absence of harm to the public interest. See 3 B & H, Federal Practice and Procedure § 1433 at 490-493 (Wright Ed. 1958); *accord*, Winkleman v. New York Stock Exchange, 445 F.2d 786, 789 (3rd Cir. 1971).

The requested injunction might have severely constricted the availability of future private financing for sorely needed, private urban redevelopment efforts.

It was also appropriate to take into consideration that although the redevelopment project formally commenced activity in June of 1976, appellants delayed until November of 1978 to seek relief. Some phases of the redevelopment plan have already been completed[11] and the potential injury to appellants from the activities proposed by the plan in the near future does not appear to be great.

VIII

We conclude that the District Court did not abuse its discretion in failing to issue the requested preliminary injunction. Appellants failed clearly to prove violations of the three federal statutes at issue or that they would suffer irreparable harm if the appellees were allowed to continue their activities. Because of this holding, we do not address the other issues raised by some of the appellees.

Judgment affirmed.

McMILLIAN, Circuit Judge, concurring.

While I concur in the result for the legal reasons discussed by the majority, I am saddened by the expediency and callousness exhibited by this rehabilitation scheme toward the original

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[11] One hundred forty-six apartments have been completely restored and forty-six condominiums remodeled.

residents of the neighborhood. The federal, state and local governments' attempts to garnish the assistance of private developers in rebuilding the inner cities is laudable. The dislocation of lower income families as exhibited in this case reveals, however, the shortsightedness in most urban redevelopment planning which, rather than alleviating the inner city ghetto, will merely cause it to geographically shift. As the majority discussed, the legislative history of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA), 42 U.S.C. §§ 4601 *et seq.*, indicates that Congress did not intend this Act to apply to relocations effectuated by private developers, even though these developers may be assisted financially by the federal government. In light of the recent trend in government programs of enticing private enterprise to undertake endeavors once assumed solely by the governmental entities, I question whether the original scope of the URA is still appropriate.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-175

CITY OF ST. LOUIS, a Municipal Corporation,
Petitioner,

v.

THOMAS W. GARLAND, INC., AND
MANLEY INVESTMENT COMPANY,
Respondents.

No. 79-206

MANLEY INVESTMENT COMPANY,
Petitioner,

v.

THOMAS W. GARLAND, INC., AND
THE CITY OF ST. LOUIS,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR RESPONDENT

Thomas W. Garland, Inc., in Opposition

RASSIEUR, LONG, YAWITZ & SCHNEIDER
ALLEN A. YODER
700 Boatmen's Tower
100 North Broadway
St. Louis, Missouri 63102
(314) 241-5845
Attorneys for Respondent
Thomas W. Garland, Inc.

St Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

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JURISDICTION

Respondent Thomas W. Garland, Inc., does not question the jurisdiction as set forth in the Petitions.

QUESTIONS PRESENTED FOR REVIEW

Petitioner City of St. Louis misstates the nature of the legal issue sought to be reviewed. The issue is whether a cause of action lies against a municipal corporation under the Fifth and Fourteenth Amendments of the Constitution of the United States for a de facto taking of property without compensation where the municipal corporation commences an urban renewal project without following the proper legal procedures, which is terminated for lack of sufficient financing after the municipal corporation and its agents have taken steps to acquire property in the area and caused condemnation blight in the area, thereby rendering the property, a leasehold interest, worthless.

Petitioner Manley Investment Company misstates the nature of the legal issue sought to be reviewed. The issue is whether federal jurisdiction may be exercised over Defendant Manley as to a state law claim arising out of the same transaction as Plaintiff's claim against another party defendant, where Defendant Manley has an interest in the subject matter of the suit and the jurisdiction over the other party defendant is based upon the presence of a federal question under 28 U.S.C.A. § 1331.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to those cited by both Petitioners, Respondent believes that the Fourteenth Amendment of the United States Constitution is also involved.

United States Constitution, Fourteenth Amendment:

> ". . . nor shall any State deprive any person of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

Respondent sets forth the salient facts of this case because of certain omissions, inaccuracies and misleading statements in the Petitions for Writs of Certiorari.

The Complaint in this case was filed on January 30, 1978. The facts are those set forth in the Complaint and the Amended Complaint and exhibits thereto. (Appendix D, E, Appendix Petition City of St. Louis) Two exhibits to the First Amended Complaint were omitted and are set forth herein as Appendix A and Appendix B.

On June 29, 1971, by Ordinance No. 55952 Defendant City of St. Louis blighted the entire downtown business area of the city, with only a few exceptions, pursuant to Section 29.020 Revised Code City of St. Louis, Missouri. On April 5, 1973, Defendant City of St. Louis passed an ordinance providing for a redevelopment contract with Mercantile Center Redevelopment Corporation for a six-block area in the business district. This area included the property occupied and used by Thomas W. Garland, Inc., under a 30-year lease, which would terminate December 4, 1982. Mercantile Center Redevelopment Corporation was to undertake a $150 million development in the six-block area. The Redevelopment Corporation had been organized on October 10, 1972, with a stated capital of $30,000. Manley Investment Company was organized as a corporation on May 10, 1972, with a stated capital of $30,000. Manley was used by Mercantile Center Redevelopment Corporation commencing in 1973 and 1974 to acquire property in City Blocks No. 118 and No. 119 for the redevelopment. On January 22, 1975, it acquired the fee interest in the property known and numbered as 410 North Sixth Street located in City Block No. 118. This property was purchased subject to the leasehold of Plaintiff Garland.

Buildings were torn down in the area of the Garland store; businesses were moved out; the remaining buildings in City Blocks No. 118 and No. 119, with the exception of the building in which was located the Garland store, are vacant and in some cases boarded up. Condemnation blight has taken over the area. These acts have destroyed the economic value of the Garland lease. Redevelopment of the area ceased because of a lack of financing to complete the project.

The City's passing of the ordinances and entering into the contract with the redevelopment corporation did not follow the requirements of the law in various ways. Specifically, it failed to require the commencement of condemnation proceedings within six months of the effective date of the ordinance authorizing the contract as required by its charter.

Plaintiff, relying on the ordinances, the representation of the Redeveloper that its property would be needed by September, 1974, and the public announcements, in 1973 and 1974 leased other property to replace its store, its administrative office, and its shipping-receiving department. Garland's constructed a new fur storage vault and moved its fur storage to that new vault. Garland's annually stores furs valued at about $1 million. All these undertakings were required to prevent a material disruption of the business and solely to provide facilities for the store and operating departments located in premises scheduled to be taken by September, 1974. Such action was not a normal method of operation and was done solely as a result of the redevelopment.

I

REASONS WHY THE PETITIONER CITY OF ST. LOUIS' PETITION FOR A WRIT OF CERTIORARI SHOULD NOT BE GRANTED

1. The Issues Presented Here Are Not Important Nationally

In this case we are dealing with a situation which arises simply because Defendant City did not follow the law and required procedures in carrying out an urban renewal program. If the City had required condemnation proceedings to be filed within six months as required by ordinance, and if it had required a detailed financial statement of the method of financing of the $150 million project by a $30,000 corporation before commencing the project, this case would not be here today. These failures, along with the failure of the City to require a performance bond under the contract as provided for therein, and to supervise performance and require compliance with the contract terms, have caused the conditions which gave rise to this litigation.

The awarding of damages for a de facto taking in redevelopment projects by federal courts in cases set forth on Page 10 and 11 of City's Petition is merely a recognition of situations where, either intentionally or unintentionally, cities have caused substantial depreciation of the value of property and caused damages to property owners in redevelopment areas for which no just compensation can be paid under the normal eminent domain laws. As alleged in the Petition, the date of taking in Missouri is the date the Commissioner's award is paid. In cases like this where redevelopment projects are delayed or terminated after partial performance, causing substantial depreciations of value of property and damages, the mischief done can only be corrected by application of this theory of recovery—a theory

recognized by this Court. *United States v. General Motors Corporation*, 323 U.S. 373 (1945); *United States v. Causby*, 328 U.S. 256 (1946).

The importance of this case nationally, if at all, is that cities are put on notice that they must comply with legal procedures in initiating and carrying out urban renewal projects, which seemingly have attracted speculators. What is presented in this case, since the legal theory is established, is simply a matter of evidence.

2. The Decision Does Not Conflict With the Decision of the Supreme Court

The Eighth Circuit Court of Appeals disagreed with the District Court, which had held that physical invasion or appropriation of property is essential to a de facto condemnation. It instead adopted as the law of the case the theory stated by this Court that some action short of acquisition or occupancy can constitute a de facto taking. Appendix B, Page A-11, Petition City of St. Louis.

3. The Eighth Circuit Court of Appeals' Decision in This Case Is Not Inconsistent With a Decision It Rendered Subsequently

The decision in *Ruby Young, Monroe Young, et al. v. Patricia Harris, et al.* (Appendix F, Petition City of St. Louis) merely determines that there was no proof of a federal project or use of federal funds involved and under the statute the relocation expenses could not be awarded. Plaintiff Garland sees nothing in the decision inconsistent with the legal theory or facts of this case.

II

REASONS WHY THE PETITION OF MANLEY INVESTMENT COMPANY FOR A WRIT OF CERTIORARI SHOULD NOT BE GRANTED

1. The Eighth Circuit's Decision Does Not Conflict With the Decisions of Other Courts of Appeal

The Petition of Manley contends that there is "irrefutable division" among the Courts of Appeal on the "pendent party" question (p. 6). However, even if Manley's Petition were granted, the resultant decision would almost certainly do nothing to resolve the supposed division.

To support its assertion of division among the Courts of Appeal, Manley has treated all pendent party cases as if the legal issues were the same in each. The distinction between different types of cases, such as between cases where federal jurisdiction is based on 28 U.S.C. § 1331 (federal question jurisdiction) and those where it is based on 28 U.S.C. § 1332 (diversity jurisdiction), is vitally important. As one writer has said:

> ". . . Federal question jurisdiction is defined by reference to the type of legal claim created by a particular factual pattern. Jurisdiction arises by virtue of that factual pattern and so should be limited by factual parameters. Diversity jurisdiction, on the other hand, is predicated upon the identity of the parties and their alignment. This suggests that the restrictive principle in diversity cases should be the identity of the parties, not the factual pattern, and that courts should hesitate to accommodate those claims or parties which cast doubt upon compliance with the diversity prerequisites." (92 Harv. L.R. 57, p. 249)

If this distinction between the basic principle underlying federal question jurisdiction and that underlying diversity jurisdiction is borne in mind, it is quite obvious that the argument in favor of exercising federal jurisdiction over pendent parties is far stronger in federal question cases than in diversity cases. As Wright, Miller and Cooper stated in their treatise, *Federal Practice & Procedure:*

> "The consideration for allowing 'pendent parties' in a federal question case may well be more compelling than for doing so when the only effect is to broaden the scope—and attractiveness—of diversity jurisdiction." (Wright, Miller & Cooper, 13A *Federal Practice & Procedure,* 462)

Because Garland's claims against Manley involve precisely the same facts as its claims against the City, which facts give rise to federal question jurisdiction, this is the ideal case for federal jurisdiction to be asserted over the pendent party.

The importance of the specific statutory provision on which federal jurisdiction is based was emphasized by this Court in *Owen Equipment & Erection Co. v. Kroger,* 437 U.S. 365 (1978). None of the five cases cited by Manley as holding that pendent jurisdiction does not encompass pendent parties involved assertions of federal jurisdiction under 28 U.S.C. § 1331. Two of the cases so cited by Manley were brought under 28 U.S.C. § 1343(3) and were fully addressed by this Court in *Aldinger v. Howard,* 427 U.S. 1 (1976). Two others cited by Manley were brought under 28 U.S.C. § 1346(b). The fifth was brought under 28 U.S.C. § 1332, federal diversity jurisdiction.

It is obvious that the division among the Courts of Appeal referred to by Manley is more illusory than real. However, even if the division were real, the issues raised in the other cases bear no resemblance to those in this case. A grant of Manley's Petition would not serve to settle any division, whether real or imagined.

2. The Eighth Circuit Court of Appeals' Decision Is Not in Conflict With Applicable Decisions of This Court

Manley's Petition places great emphasis on three decisions of this Court to support its contention that the decision of the Eighth Circuit Court of Appeals is inconsistent with decisions from this Court. A careful examination of those three cases reveals that the Court of Appeals' decision is entirely consistent with them.

At Page 9 Manley's Petition asserts that the case of *United Mine Workers v. Gibbs,* 383 U.S. 715 (1966) "does not require, or even suggest, a departure from the pre-existing rule that pendent jurisdiction pertained only to pendent claims and not to pendent parties". This assertion is directly contrary to this Court's statement in *Gibbs* at 383 U.S. 724 that "Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; *joinder of claims, parties and remedies is strongly encouraged*". [Emphasis added.] Joinder of pendent parties was obviously contemplated in *Gibbs.*

Manley next attempts to demonstrate that the Court of Appeals' decision is contrary to this Court's rulings in *Aldinger v. Howard,* supra, and *Owen Equipment & Erection Co. v. Kroger,* supra. This Court's decision in *Aldinger* at 427 U.S. 18 stated that ". . . we decide here only the issue of so-called 'pendent party' jurisdiction with respect to a claim brought under §§ 1343(3) and 1983. Other statutory grants and other alignments of parties and claims might call for a different result." The *Aldinger* decision is in no way contrary to that of the Court of Appeals. In fact, *Aldinger* makes it abundantly clear that the federal courts must consider the specific statutory grant under which federal jurisdiction is asserted. As previously discussed, cases involving assertions of federal question jurisdiction are the most desirable for asserting jurisdiction over a "pendent party".

In *Owen Equipment & Erection Co. v. Kroger*, supra, this Court was presented with an attempt to erode the basic concept underlying federal diversity jurisdiction: complete diversity of the parties (e.g., *Strawbridge v. Curtiss*, 3 Cranch. 267, 2 L.Ed. 435 (1806); *Susquehanna & Wyoming Valley Railroad & Coal Co. v. Blatchford*, 11 Wall. 172, 20 L.Ed. 179 (1871); *Indianapolis v. Chase National Bank*, 314 U.S. 63 (1941); *American Fire & Cas. Co. v. Finn*, 341 U.S. 6 (1951)). This Court refused to permit the plaintiff to proceed with her claim against a third-party defendant of the same citizenship as the plaintiff after the original defendant, who was of another citizenship, was dismissed from the case after impleading the third-party defendant. A contrary decision would have permitted a plaintiff to bring suit against a diverse defendant and simply wait for that defendant to implead any other defendants, regardless of citizenship. After the diverse defendant has been dismissed from the case, it would make a mockery of the requirements for federal jurisdiction to permit the plaintiff to continue the suit if only non-diverse defendants remain.

The claims asserted in *Owen* against the original and third-party defendants were in no way logically dependent upon each other. Each claim had its own separate factual basis. Unquestionably the plaintiff could, and almost certainly would, have been successful against one defendant and unsuccessful against the other because the claims asserted were mutually exclusive.

When the facts of this case are considered, it is obvious that *Owen* is readily distinguishable. Plaintiff's claim against Manley is almost wholly dependent on its claim against the City. Plaintiff's Complaint asserts that performance of its lease with Manley has been rendered impossible by the acts of the City and its agents (Appendix D Petition City of St. Louis, p. A-40). Unless Plaintiff can demonstrate that its leasehold interest has been taken by the City, it almost certainly cannot demonstrate impossibility of performance of its lease.

This factual pattern makes it apparent that there is but one constitutional "case" presented. As this Court said in *Aldinger* at 427 U.S. 8:

> 'Thus, in a federal question case, where the federal claim is of sufficient substance, and the factual relationship between 'that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional "case", pendent jurisdiction extends to the state claim."

Furthermore, without Manley as a Defendant the court would be unable to afford Plaintiff complete relief. If Plaintiff's action against the City succeeds and it is held that Plaintiff's leasehold interest has been taken, Plaintiff would still be liable to Manley for rent as it becomes due because the judgment could not operate against Manley. Plaintiff would then be forced to file a separate state action against Manley.

CONCLUSION

For the above reasons this Honorable Court should not issue its Writ of Certiorari to review the decision of the United States Court of Appeals for the Eighth Circuit in this case.

Respectfully submitted,

RASSIEUR, LONG, YAWITZ
& SCHNEIDER

By ALLEN A. YODER
700 Boatmen's Tower
100 North Broadway
St. Louis, Missouri 63102
(314) 241-5845

Attorneys for Respondent
Thomas W. Garland, Inc.

APPENDIX

APPENDIX A

Exhibit C

REVISED CODE OF ST. LOUIS

Article XXI. Eminent Domain

Section 1. Initiation of Proceedings—Condemnation of (and) or damage to private property, real or personal, or any easement or use therein or restriction of the use thereof for public use, shall be effected as herein provided and as may be further provided by ordinance not inconsistent with this charter.

(a) Petition.—Upon the board of aldermen providing by ordinance recommended by the board of public service, (1) for the appropriation of any private property or any easement, use, right or interest therein, or (2) damage by reason of establishing or changing the established grade of any public street or alley or restriction of the use thereof, for any public use, or (3) for any public improvement or work which will damage private property, the city counselor, in the name of the city, shall apply promptly and in no event later than six months after such ordinance is effective to the circuit court of the eighth judicial circuit, or to any judge thereof in vacation by petition setting forth the general nature of the public use for which the property is to be appropriated, damaged or restricted, a description of the property and the estate or interest therein or restriction of the use thereof in each instance which the city seeks to appropriate, damage or impose, and praying the appointment of three disinterested commissioners to assess damages and benefits as hereinafter provided, to which petition the owners shall be made defendants by name, if known, and if known, by describing their claims and interests in such property and how derived by them.

(b) Parties defendant.—If the action affects the property of persons under guardianship, the guardians shall be made defend-

ants; if the property of married persons, their consorts shall be made defendants; if an estate or interest less than a fee, the persons having the next vested estate in remainder or reversion shall be made defendants or their interests will not be bound; but only persons in actual possession of and claiming title or who have record title appearing upon the proper records of the city to property affected, need be made defendants.

(c) Notice.—Notice of the filing of the petition, describing the property to be taken, damaged or restricted, shall be filed and recorded in the office of the recorder of deeds, otherwise purchasers of such property shall not be bound by the proceedings under the petition, provided that whenever the board of public service of said city shall by order designate the established grade of any street, boulevard, parkway, alley or other highway proposed in said ordinance to be opened, established or widened, damages and benefits, because of the establishment of such grade, may be ascertained and determined together with and in the same proceeding as the damages and benefits with respect to said opening, establishment or widening; in which case said established grade shall be set forth in the petition or in an amended petition.

(d) Resubmission of ordinance.—Where the improvement is a major highway or traffic artery, and is so designated in the ordinance, said ordinance may provide that in case the total damages, as finally determined by the court, to be awarded for property * * *

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APPENDIX B

Exhibit D

MERCANTILE CENTER

A Redevelopment Project

by

Mercantile Center Redevelopment Corporation

October 19, 1972

Sverdrup & Parcel and Associates, Inc.

Supervising and Coordinating Architects-Engineers

Thompson, Ventulett & Stainback, Inc.

Master Plan & Design Architects

235 Peach Street N.E.

Suite 1900

Atlanta, Ga. 30303

* * * * * * *

O. **Proposed method of financing**

All of the land required for the construction of Phase I is owned in fee simple by Mercantile Development Corporation, a subsidiary of Mercantile Trust Company N.A., or by Mercantile Trust Company N.A. It is proposed that titles to the Phase I land will be transferred to Mercantile Center Redevelopment Corporation. This, together with the fact that Mercantile Trust Company N.A. will lease and occupy approximately 50% of the Phase I commercial building, removes Phase I of the project from the "speculative" category.

The developers of this project are currently engaged in other projects of this magnitude and are well versed in securing financing for this type of development.

Preliminary discussions have been held with major financial institutions regarding this project. Necessary financing can and will be finalized shortly after approval of this application.

No local, state or federal expenditures are involved.

Supplemental information:

It is proposed that Mercantile Center Redevelopment Corporation will lease real property to "Mercantile Center Associates, a joint venture under Joint Venture Agreement dated May 23, 1972," and Mercantile Center Associates will construct the buildings upon said leasehold. See V. Supplemental Information.

Note: The information supplied above is not offered because it relates to financing but to correct any possible misimpression created by the material previously submitted and to make clear the nature of the plan.